UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/SR.1
20 November 1998

ORIGINAL: ENGLISH

SUMMARY RECORD OF THE 1st PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 15 June 1998, at 10 a.m.

Temporary President: Mr. Kofi ANNAN (Secretary-General of the United Nations)
President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
1	Opening of the Conference by the Secretary-General	1-12
-	Address by the President of the Republic of Italy	13-18
2	Election of the President	19-27
-	Statement by the Director-General of the Food and Agriculture Organization of the United Nations	28-29
3	Adoption of the agenda	30

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the plenary meetings of the Conference will be consolidated in a single corrigendum.

V.98-57496 (E)
99-80780 (E)

Agenda item		*Paragraphs*
4	Adoption of the rules of procedure	31-33
5	Election of Vice-Presidents	34-36
6	Election of the Chairman of the Committee of the Whole	37-38
7	Election of the Chairman of the Drafting Committee	39-40
8	Appointment of the Credentials Committee	41-42

The meeting was called to order at 10.15 a.m.

OPENING OF THE CONFERENCE BY THE SECRETARY-GENERAL

1. **The TEMPORARY PRESIDENT** declared open the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

2. *At the invitation of the Temporary President, the participants observed a minute of silence for prayer or meditation.*

3. **The TEMPORARY PRESIDENT** thanked the Italian Government for its generosity in hosting the Conference and for its continued strong support of the United Nations.

4. The road leading to the holding of the Conference in the "Eternal City" had been a long one, passing through some of the darkest moments in human history but also marked by the belief that the true nature of human beings was to be noble and generous. Though most human societies had practised warfare, most had also had some kind of warrior code of honour, proclaiming the need to protect the innocent and to punish excesses of violence. Unhappily, that had not prevented the extermination of indigenous peoples or the barbaric trade in African slaves.

5. With the use of weapons of mass destruction and the application of industrial technology to dispose of millions of human beings, the world had come to realize that relying on each State or army to punish its own transgressors was not enough. All too often, such crimes were part of a systematic State policy and the worst criminals might be found at the pinnacle of State power.

6. After the defeat of nazism and fascism, the United Nations had been set up in an effort to ensure that world war could never happen again. The victorious Powers had set up international tribunals at Nuremberg and Tokyo to judge the leaders who had ordered and carried out the worst atrocities. They had decided to prosecute Nazi leaders not only for war crimes but also for crimes against humanity, including the Holocaust. However, the General Assembly of the United Nations had not considered it sufficient to make an example of a few arch-criminals. It had adopted the Convention on the Prevention and Punishment of the Crime of Genocide, and requested the International Law Commission to study the possibility of establishing a permanent international criminal court. The cold war had prevented further progress at the time but had not prevented further crimes against humanity.

7. The most notorious example of such crimes in that period had been the killing of more than two million people in Cambodia, the organizer of which had recently died without being brought to justice. It was not until the 1990s that a political climate had prevailed in which the United Nations could again consider establishing an international criminal court. Unhappily, the current decade had also brought new crimes to force the issue on the world's attention. Events in the former Yugoslavia had added the dreadful euphemism of "ethnic cleansing" to the international vocabulary. Perhaps a quarter of a million people, mostly civilians guilty only of living on the wrong side of an arbitrary line, had died there between 1991 and 1995. In 1994, there had been the genocide in Rwanda, which had done irreparable damage not only to one small country but to the very idea of an international community. In future, the United Nations and its Member States must summon the will to prevent the repetition of such a catastrophe anywhere in the world, and as part of that effort it must be made clear that such crimes would be punished.

8. Following the events in the former Yugoslavia and Rwanda, ad hoc tribunals had to be set up for those two countries. The tribunals had issued indictments and international arrest warrants. Persons indicted but not yet arrested had become international pariahs who, though enjoying the presumption of innocence, could not travel freely or hold political office. Six weeks before the current Conference, a former Prime Minister of Rwanda had pleaded guilty before a tribunal to the charge of genocide—representing an historic milestone.

9. Whatever their imperfections, the tribunals were showing that there was such a thing as international criminal justice, and that it could have teeth. But ad hoc tribunals were not enough. People all over the world wanted to know that whenever genocide, war crimes or other such violations were committed, there was a court before which the criminal could be held to account, a court where "acting under orders" was no defence, a court where all individuals in a government hierarchy or military chain of command, without exception, must answer for their actions.

10. World public opinion had led to the holding of the Conference, stimulated by the hard work of the Red Cross, of many other non-governmental organizations and of the humanitarian community. The whole world would be watching the Conference, and concrete results would be expected.

11. The difficulties to be overcome in the five weeks ahead should not be underestimated. The work of the Preparatory Committee had shown the complexity of the issue and how many conflicting principles and interests had to be reconciled. Some small States feared giving pretexts for more powerful ones to set aside their sovereignty. Others worried that the pursuit of justice might sometimes interfere with the vital work of making peace. Those concerns had to be taken into account. Obviously, the aim must be to create a statute that would be accepted and implemented by as many States as possible. But the overriding interest must be that of the victims, and of the international community as a whole. The court must be strong and independent enough to carry out its tasks, an instrument of justice, not expediency; it must be able to protect the weak against the strong.

12. He hoped that the participants, in the long weeks of hard and detailed negotiations that lay ahead, would feel that the eyes of the victims of past crimes, and of the potential victims of future ones, were fixed firmly upon them. The Conference offered an opportunity to take a monumental step in the name of human rights and the rule of law, an opportunity to create an institution that could save lives and serve as a bulwark against evil, bequeathing to the next century a powerful instrument of justice. Future generations would not forgive failure in that endeavour.

ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF ITALY

13. **Mr. SCALFARO** (President of the Republic of Italy) said that his country was honoured to host the Conference. It was aware of the great responsibility entailed and was committed to ensuring the Conference's success.

14. The basis for the Conference was the 1948 Universal Declaration of Human Rights. The rights therein proclaimed were inherent rights, not something granted as a concession by a State or the United Nations. To deprive persons of such rights was no longer to treat them as persons. The Italian Constitution, in article 2, recognized the inviolable rights of human beings. "Recognition" implied that the existence of such rights had preceded the establishment of the State; States had been created to give them a legal and constitutional form.

15. In the introductory paragraph preceding the articles, the Universal Declaration of Human Rights called on every individual and every organ of society to strive to promote respect for the rights and freedoms proclaimed. According to article 1 of the Declaration, "All human beings are born free and equal in dignity and rights". Human beings should work together in a spirit of brotherhood, respecting each other's rights; they should obey a universal moral law protecting human dignity and condemning acts against humanity.

16. Since the adoption of the Declaration, there had been countless violations of human rights, including ethnic cleansing, genocide, the denial of the rights of minorities, child abuse and denial of people's right to their beliefs. A supranational body was needed with the power to examine and punish such violations. The ad hoc tribunals set up for the former Yugoslavia and Rwanda represented positive advances, but they worked only in a limited context. Criminal law should always precede crimes; it should be known that the crimes were punishable by law and what the penalties would be. It should be possible for appeals to be brought. Any tribunal set up should be impartial and competent, the rights of the defendant as well as of the international community should be protected, and it should be borne in mind that justice delayed was justice denied.

17. An international criminal court should not undermine the concept of national sovereignty, but crimes such as those that had been committed in Rwanda and the former Yugoslavia called for qualified supranational judges, able to overcome the barriers of national frontiers. Such crimes affected humanity as a whole. A crime committed by a Government or a self-proclaimed authority could be judged only by a court which was set above States and countries.

18. Those were the problems to which a reply was awaited. The Conference would not have an easy task, but he was convinced that, working together, the participants could overcome the difficulties.

The meeting was suspended at 10.45 a.m. and resumed at 10.50 a.m.

ELECTION OF THE PRESIDENT

19. **The TEMPORARY PRESIDENT** said it was his understanding that Mr. Giovanni Conso (Italy) had been nominated by all the regional groups for the office of President.

20. *Mr. Giovanni Conso (Italy) was elected President by acclamation and took the Chair.*

21. **The PRESIDENT** said that, after the end of the cold war, many States had accepted the principles of democracy and respect for fundamental human rights, and hopes had been raised for lasting peace among peoples and security and cooperation among States. Unfortunately, those hopes had been disappointed. Armed conflict had raged in many parts of the world and terrible atrocities had occurred. At that very moment, acts of violence were being committed against innocent civilians. The world could not remain indifferent to such behaviour. Decisive measures were needed to bring such acts of violence to an end. The establishment of an international criminal court would send the unmistakable message to all those responsible for abominable crimes that they could no longer act with impunity, and that they would be brought to justice. It would make it clear that no one was above the law, and that anyone seen as bearing individual criminal responsibility for such atrocities would be punished.

22. Several attempts had been made to establish an international criminal court since the end of the Second World War. The achievement of that objective had been hampered in the past by the prevailing political climate, but the world was currently closer to realizing that aim than ever before, and the Conference should not waste the opportunity to achieve its goal.

23. The expectations of mankind must not be disappointed. The court must be universal and independent so that it could prosecute the most serious crimes impartially and efficiently. World public opinion would follow the work of the Conference very closely to see that it completed its essential task of adopting a convention that would lead to the setting up of an international criminal court.

24. The establishment, at the initiative of the Security Council, of ad hoc tribunals for the former Yugoslavia and Rwanda showed that the political will existed and that it was possible to establish a viable international mechanism that was equitable and just. Such a permanent international mechanism could guarantee that there would be no selective justice, but that whenever odious crimes were committed, wherever they took place, they would be punished.

25. Finally, the establishment of an international criminal court would be the guarantee of a more humane and just world order.

26. He thanked the Preparatory Committee for its excellent work under the chairmanship of Mr. Adriaan Bos, who was unfortunately not able to be present.

27. He would spare no effort to ensure that the Conference could elaborate and adopt a convention establishing an international criminal court. He was sure that the importance of the aims that the Conference was seeking to achieve would be present in the minds of all participants.

STATEMENT BY THE DIRECTOR-GENERAL OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

28. **Mr. DIOUF** (Director-General, Food and Agriculture Organization of the United Nations) welcomed the participants to FAO Headquarters and said that an objective implicit in the mandates of all agencies of the United Nations system was to secure universal respect for human rights and fundamental freedoms throughout the world. The world's leaders had stressed that objective at the World Food Summit held in Rome in 1996, in the context of the fight against hunger.

29. FAO was happy to lend its support to the efforts of the Conference to establish a permanent international criminal court, as a decisive step forward in the struggle for peace and justice and respect for human rights in conflict situations. He hoped that the work of the Conference over the next few weeks would be fruitful and would set the scene for a new millennium in which the human rights and fundamental freedoms of all people were universally respected.

ADOPTION OF THE AGENDA (A/CONF.183/1)

30. *The provisional agenda (A/CONF.183/1) was adopted.*

ADOPTION OF THE RULES OF PROCEDURE (A/CONF.183/2/Add.2, A/CONF.183/4, A/CONF.183/5)

31. **The PRESIDENT** said that some of the draft rules of procedure in document A/CONF.183/2/Add.2 had given rise to disagreement in the Preparatory Committee. Consequently, the figures contained in draft rules 6, 11 and 49 had been placed in square brackets. Draft rules 19, 36 and 52 had also been placed in square brackets.

32. However, informal consultations had since taken place and the outstanding questions had been resolved. The results of those consultations were reflected in documents A/CONF.183/4 and A/CONF.183/5. He therefore suggested that the draft rules of procedure contained in document A/CONF.183/2/Add.2, as amended and supplemented by documents A/CONF.183/4 and A/CONF.183/5, be adopted.

33. *It was so decided.*

ELECTION OF VICE-PRESIDENTS

34. **The PRESIDENT** said that, in accordance with rule 6 of the rules of procedure, the regional groups had put forward the candidatures of the following States to fill the 31 posts of Vice-Presidents of the Conference:

> Algeria, Austria, Bangladesh, Burkina Faso, Chile, China, Colombia, Costa Rica, Egypt, France, Gabon, Germany, India, Iran (Islamic Republic of), Japan, Kenya, Lithuania, Malawi, Nepal, Nigeria, Pakistan, Russian Federation, Samoa, Slovakia, Sudan, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

35. He therefore suggested that the representatives of those States be elected to the posts of Vice-Presidents of the Conference.

36. *It was so decided.*

ELECTION OF THE CHAIRMAN OF THE COMMITTEE OF THE WHOLE

37. **The PRESIDENT,** referring to paragraph 4 of document A/CONF.183/4, said that, following consultations, Mr. Philippe Kirsch (Canada) had been nominated by the regional groups as Chairman of the Committee of the Whole.

38. *Mr. Philippe Kirsch (Canada) was elected Chairman of the Committee of the Whole by acclamation.*

ELECTION OF THE CHAIRMAN OF THE DRAFTING COMMITTEE

39. **The PRESIDENT** said that Mr. Cherif Bassiouni (Egypt) had been nominated as Chairman of the Drafting Committee.

40. *Mr. Cherif Bassiouni (Egypt) was elected Chairman of the Drafting Committee by acclamation.*

APPOINTMENT OF THE CREDENTIALS COMMITTEE

41. **The PRESIDENT** said that, in accordance with rule 4 of the rules of procedure, a Credentials Committee would be set up, composed of nine members. It was his understanding that the membership would be the same as that of the Credentials Committee of the fifty-second session of the General Assembly and therefore suggested that the Credentials Committee should be made up of the representatives of Argentina, Barbados, Bhutan, China, Côte d'Ivoire, Norway, Russian Federation, United States of America and Zambia.

42. *It was so decided.*

The meeting rose at 11.20 a.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/SR.2
20 November 1998

ORIGINAL: ENGLISH

SUMMARY RECORD OF THE 2nd PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 15 June 1998, at 3 p.m.

President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
9	Appointment of the other members of the Drafting Committee	1-4
10	Organization of work	5-6
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997	7-121

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the plenary meetings of the Conference will be consolidated in a single corrigendum.

V.98-57497 (E)
99-80786 (E)

The meeting was called to order at 3.10 p.m.

APPOINTMENT OF THE OTHER MEMBERS OF THE DRAFTING COMMITTEE

1. **The PRESIDENT** drew attention to rule 49 of the rules of procedure of the Conference concerning the composition of the Drafting Committee. Since Mr. Cherif Bassiouny had been elected Chairman of the Drafting Committee at the first meeting, it merely remained to appoint the 24 other members.

2. He had received the following nominations: Cameroon, China, Dominican Republic, France, Germany, Ghana, India, Jamaica, Lebanon, Mexico, Morocco, Philippines, Poland, Republic of Korea, Slovenia, South Africa, Spain, Sudan, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

3. He suggested that the Conference might wish to appoint the representatives of those countries as members of the Committee.

4. *It was so decided.*

ORGANIZATION OF WORK (A/CONF.183/3 and Corr.1; A/CONF.183/2)

5. **The PRESIDENT** drew the attention of the Conference to documents A/CONF.183/3 and Corr.1 and A/CONF.183/2. The Conference and its bodies had the necessary latitude to adapt the procedures recommended in those documents to their needs. He invited the Conference to adopt the draft organization of work as outlined.

6. *The draft organization of work was adopted.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (A/CONF.183/2/Add.1)

7. **Mr. DOWNER** (Australia) said that great achievements had been made in the twentieth century but that acts of almost unimaginable inhumanity had also been committed. Against that background, the Conference offered the opportunity to establish a practical, permanent framework to deal with the most serious crimes of concern to the international community.

8. The international community had not acted earlier to see justice done because it had had neither the will nor the mechanism to carry out such a task. However, the Security Council had indeed established ad hoc tribunals to investigate and prosecute crimes committed in Rwanda and the former Yugoslavia, and a draft Statute for an international criminal court had also been produced.

9. To make the International Criminal Court a reality, some fundamental issues needed to be resolved. A balance must be struck between the jurisdiction of the Court and that of national justice systems. Australia strongly supported the view that, if national jurisdiction was able and willing to deal effectively with alleged crimes it should take precedence. However, the Court must also be able to determine whether a national jurisdiction could effectively investigate and prosecute. Sham investigations or proceedings at the national level could not remain unchallenged.

10. There must be agreement on mechanisms that would trigger the Court's jurisdiction. Australia had long considered that the Court's jurisdiction should be initiated through a complaint by a State party to the Court's Statute or by the Security Council under its powers concerning the maintenance of international peace and security. He was also prepared to support empowering the Prosecutor to initiate investigations directly. However, the Prosecutor's right to act must be subject to appropriate safeguards, to avoid politically motivated complaints.

11. There must also be a workable relationship between the Court and the Security Council, recognizing the Council's primacy in matters relating to international peace and security.

12. Finally, agreement must be reached on the specific crimes that should fall within the Court's jurisdiction. Clearly, the Court's Statute must encompass genocide, crimes against humanity and war crimes, but, while there was broad agreement on the definition of "genocide", questions of the definition of "crimes against humanity" and "war crimes" still had to be resolved. Ethnic cleansing and systematic rape and torture were of such gravity that they must be included in the ambit of the Court's jurisdiction. Discussion and negotiation on those problems would be necessary, but the Conference must not be diverted from its central task of establishing a Court that would honour past generations and protect future generations.

13. **Mr. OMAR** (South Africa), speaking on behalf of the Southern African Development Community (SADC), said that the Conference was taking place at a time when most brutal and shocking conflicts had occurred throughout the world, highlighting the need to establish an international system of justice under which those responsible for atrocities would be prosecuted and punished.

14. The establishment of an international criminal court would not only strengthen the arsenal of measures to combat gross human rights violations, but would ultimately contribute to the attainment of international peace. In view of the crimes committed under the apartheid system, the Court should send a clear message that the international community was resolved that the perpetrators of such gross human rights violations would not go unpunished.

15. The Ministers of Justice and Attorneys-General of the SADC region had held discussions on the draft Statute for the establishment of the Court and had affirmed their commitment to its early establishment as an independent and impartial body. It should be an effective complement to national criminal justice systems, operating within the highest standards of international justice. He reiterated the basic principle that the Court should contribute to furthering the integrity of States generally, as well as the equality of States within the general principles of international law. The International Criminal Court was a necessary element for peace and security in the world and must, therefore, have inherent jurisdiction over the crimes of genocide, crimes against humanity, war crimes in international and non-international armed conflicts and aggression. It should also have competence in the event of the inability, unwillingness or unavailability of national criminal justice systems to prosecute those responsible for grave crimes under the Statute, while respecting the complementary nature of its relationships with such national systems.

16. The SADC States believed that the Prosecutor should be independent and have authority to initiate investigations and prosecutions on his or her own initiative, without interference from States or the Security Council, subject to appropriate judicial scrutiny. The independence of the International Criminal Court must not be prejudiced by political considerations.

17. **Ms. JOHNSON** (Norway) said that two world wars and numerous armed conflicts had brought untold sorrow to mankind. The tide of international opinion was turning against impunity for the worst international crimes. Justice and legal order were increasingly perceived as prerequisites for lasting peace.

18. Ad hoc tribunals might not be an option for prosecuting crimes such as genocide, which made it essential to establish a permanent court. In her opinion, its seat should be The Hague.

19. A permanent court with unquestionable legitimacy might be more conducive than an ad hoc tribunal to peace-making because no warring party could reasonably portray such a court as being politicized and mass murderers could not expect impunity.

20. Though there was no doubting the magnitude of the Conference's task, no State had contested the need for an international criminal court. The issue was what kind of court it should be. It would have to be strong, with the broadest possible support for its Statute, focusing on a limited list of crimes. Pragmatic concentration at that stage on international crimes which were almost universally recognized would promote wide acceptance of the Court. It must also be made clear that adequate rules were needed on sexual violence. On the other hand, attempts to enlarge the list of crimes prematurely might prove a stumbling block. A revision clause could be included to provide an avenue for re-evaluation of the list in the future.

21. She favoured complementarity between the Court and national jurisdictions. Both States and the Security Council must be able to refer situations to the Court, as opposed to complaints about individuals. The threshold requirements must not be too high. Once a situation had been referred, it must be entirely up to the Court to investigate and prosecute individuals on the basis of a truly independent mandate.

22. She advocated giving ex officio powers to the Prosecutor to trigger the Court's intervention, a question that must be fully explored. Confidence-building checks and balances were necessary to establish the independence of the Prosecutor. Protection against prosecutorial bias followed from a number of provisions. Norway perceived the proposal for a pre-trial chamber as a particularly significant step forward compared to the statutes of the existing ad hoc tribunals. Moreover, it must be recognized that States, as well as international organizations, might have legitimate reasons for wishing to protect sensitive information or sources. Adequate procedural safeguards to that effect would be an important improvement.

23. The Court must have the necessary financial resources for its work.

24. Lastly, she rejected the inclusion of the death penalty in the Statute and considered a reservations clause to be totally unacceptable, since the mere possibility of such a clause would significantly diminish the rationale for compromise in negotiations.

25. In the Conference's work, it would be necessary to show pragmatism, compromise and sober realism on some issues but boundless ambition on others.

26. Norway was committed to the establishment of a strong and independent Court. All participants should seize the historic opportunity offered.

27. **Mr. MAHARAJ** (Trinidad and Tobago) said that his Government had long supported the establishment of a permanent international criminal court that would be independent and have effective jurisdiction to deal with the most serious crimes of international concern. In the light of recent events, he supported the extension of the Court's

jurisdiction to internal armed conflicts. The activities of drug traffickers and their armed supporters ought also to be regarded as most serious crimes of international concern.

28. It had been the consensus of discussions at a recent Caribbean and Latin American regional workshop that the Court must be impartial and free from political interference.

29. It was generally agreed that the Court would exercise its jurisdiction only when domestic courts, which had primary responsibility, were unwilling or unable to prosecute. On the question of the "trigger mechanism", care should be exercised to ensure that the Court would not have to await a decision by the Security Council before it could launch its investigations. However, the Security Council had a role to play in relation to the Court.

30. He was satisfied that the rights of suspects and accused persons, and the level of protection to be accorded to victims and witnesses, had been appropriately addressed in the draft Statute. It was vital to set up a Victims and Witnesses Unit within the Registry of the Court. He also supported proposals seeking to ensure that violence against women and children and the use of children in armed conflicts were punishable. He was convinced that, though the Court would not solve all problems, it would promote the rule of law and help to maintain peace.

31. **Mr. LLOYD** (United Kingdom), speaking on behalf of the European Union, the Central and Eastern European countries associated with the European Union, the associated country Cyprus and the European Free Trade Association countries Iceland and Norway, said that the year marking the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights and of the Genocide Convention was auspicious for the equally historic task of negotiating a Statute for a permanent international criminal court. The establishment of such a court had long been debated and the Security Council had set up ad hoc tribunals to bring to justice those responsible for atrocities in Rwanda and the former Yugoslavia. While those tribunals were doing valuable and difficult work, there was no doubt that a truly effective, permanent court would make the world a juster, safer and more peaceful place.

32. The member States of the European Union were firmly committed to certain key principles. The Court had to be universal, effective and based on sound legal principles. It must meet the requirements of justice; it must be lasting and it must inspire confidence. It should be an independent institution in relationship with the United Nations, with a sound financial base.

33. The Court should have jurisdiction over genocide, crimes against humanity and war crimes. He shared the widespread desire to include crimes of aggression, properly defined, within the jurisdiction of the Court. That should not, however, detract from the role of the Security Council in maintaining international peace and security.

34. It would be necessary to achieve a generally acceptable definition of war crimes. War crimes within the Court's jurisdiction should include those committed in internal as well as international armed conflicts. Gender-related crimes and the use of children in armed conflict should be explicitly included in the definition of war crimes.

35. The Court would be complementary to national processes, acting only where national systems were unable or unwilling to investigate a crime or to prosecute. Particular attention should be paid to the election of highly qualified judges, whose independence would be best secured by providing for a long tenure of office. The Court should have a strong, effective and highly qualified Prosecutor, independent of Governments.

36. The Court would be dependent on an effective system of State cooperation. States parties should have a mandatory obligation to comply with requests for assistance by the Court, which should be given priority over requests from other States. Grounds for refusal based upon national extradition legislation should not be admitted.

37. The Court should have power to award reparations to victims. Its final judgement should be immediately enforceable and a sentence of imprisonment should be implemented without change by States parties which were willing to accept sentenced persons. There must be no provision for a death penalty.

38. The Security Council should be able to refer to the Court situations in which crimes might have been committed, thus obviating the need for further ad hoc tribunals. The Court's procedures should be adapted from the principal legal traditions, to ensure fair and effective operation, safeguard the rights of the accused and provide adequate protection and assist victims in giving evidence. He supported the establishment of a pre-trial chamber.

39. Those rules of procedure of the Court that were not appropriate for inclusion in the Statute itself, should be negotiated by States after the Statute was opened for signature. The Conference should consider favourably the offer of the Government of the Netherlands to host the Court in The Hague.

40. **Mr. OWADA** (Japan) said that his Government fully supported the establishment of an international criminal court, which had long been an aspiration of the international community. It was convinced that the Court would play a crucial role in bringing to justice those who committed the most heinous crimes against the international community.

41. The Court should be a strictly independent and impartial judicial organ of the international community, independent of any political influence, and its judgements should be given exclusively on the basis of law. It should be formed as an international organization and must therefore have the cooperation of all countries concerned.

42. The guiding principle of operation should be complementarity, in that the Court should have jurisdiction only when national systems of criminal justice were not operational or effective. The Court should be established on the basis of universal participation.

43. The establishment of the International Criminal Court raised a number of major points of legal significance that required rigorous scrutiny. His Government firmly believed that the scope of the International Court should include genocide, war crimes, crimes against humanity and the crime of aggression. It was of the utmost importance to define the constituent elements of those crimes in a precise manner, in view of the cardinal importance, *inter alia*, of the principle of *nullum crimen sine lege*.

44. War crimes should be those established as crimes against the laws of war that were covered by existing international instruments, as well as those considered to have become part of customary international law. However, crimes that had not become part of customary international law should be excluded, without excluding the development of the law in that area.

45. The crime of aggression should be included, but it should be borne in mind that determination of the act of aggression by a State must lie within the exclusive competence of the Security Council. While the determination of aggression perpetrated by a State was separate from the question of the criminal responsibility of an individual, he considered determination of an act of aggression by the Security Council was nevertheless a prior condition for the exercise of jurisdiction by the Court in relation to an individual.

46. The International Court should not deprive national courts of their jurisdiction, and the right to refer a case to the Court should be limited to States parties to the Statute and to the Security Council. The Court's power was so great that a proper balance between its power and the legitimate interests of the States parties should be maintained with regard to the mechanism to trigger its activities. He therefore considered it inappropriate to give the Prosector the right to initiate an investigation *proprio motu*.

47. The effective functioning of the Court would depend on international cooperation and judicial assistance by States parties, which required a clear definition of the grounds on which a request by the Court for cooperation could be declined by States.

48. The International Criminal Court should be independent of the United Nations, since it would be advisable to avoid the need for amendment to the United Nations Charter. Being independent of the United Nations, the Court should be financed by States parties to its Statute.

49. **Mr. ESCOVAR SALOM** (Venezuela) said that the examination of individual international criminal responsibility was a major step forward for international law and for the international community.

50. Though it would be difficult to reflect the various legal systems in the Statute in a balanced way, the Conference must show flexibility and a spirit of compromise.

51. His country had from the outset supported the establishment of a new international criminal court and had played an active and constructive role in the preparatory process.

52. The Court should be independent in order to have moral strength and practical value. It would have to decide on its own competence and jurisdiction, exercising the power established under international law. It must have not only jurisdictional, but also functional and procedural, and therefore also budgetary autonomy.

53. The Court would have to be permanent unlike the ad hoc tribunals. In order to meet future needs, international law must be strengthened, so as to forge and consolidate an effective institution.

54. **Ms. FREIVALDS** (Sweden) associated herself with the statement made by the representative of the United Kingdom on behalf of the European Union and said that prosecution before an international criminal court should be readily possible when it was clear that national legal systems had failed to bring to justice those suspected of serious crimes under international law. A consent regime, other than for non-State parties, would seriously obstruct justice. Action by the Court should be possible when either the State where the crime occurred, the State with custody over the suspect, or the State of the nationality of the suspect or the victim was a party to the Statute.

55. The Security Council, under Chapter VII of the Charter, should indeed be able to refer situations to the Court in which crimes under the Court's jurisdiction appeared to have been committed but not punished. That would obviate the need to create new ad hoc tribunals. However, referral of a case to the Security Council should not stop its being brought before the Court, and the Council should be able to delay proceedings before the Court only by a specified decision. States parties should also be able to refer situations to the Court.

56. If the Court were to be effective, the Prosecutor must be able to initiate prosecution of crimes under ICC jurisdiction that were not being genuinely investigated or prosecuted. After judicial review, an investigation should then be allowed to proceed. The Prosecutor should safeguard the rights of the suspect, in which context a pre-trial chamber would have a role to play.

57. It should be mandatory for States to comply with the Court's requests for assistance, which must take precedence over mutual assistance requests from States. The system of cooperation with the Court could not be built on national extradition and assistance provisions, and traditional grounds for refusal could not be accepted.

58. Effective measures were needed to protect witnesses and victims and appropriate ways must be found of making reparation to victims.

59. The Court's final judgements must be immediately enforceable, and a sentence of imprisonment should be implemented without change in a State party willing to accept convicts. Sweden was emphatically opposed to the death penalty.

60. General agreement was emerging that the Court's jurisdiction should apply only to the core crimes of genocide, crimes against humanity and war crimes, but she also favoured the inclusion of aggression, provided that it was properly defined and treated in a way that respected the role of the Security Council. She also suggested that crimes against United Nations and associated personnel should be added to the list. By becoming a party to the Statute, a State must accept the Court's jurisdiction over all those types of crimes.

61. In view of the constant development of international law, the list of crimes might be reviewed after the Statute's entry into force. The Statute should be flexible, to allow for emerging prohibitions on such means of warfare as anti-personnel landmines. The definition of war crimes should reflect the fact that most modern conflicts were non-international. Gender-related crimes and the child soldier issue must be given due attention. She rejected any attempt to impose an arbitrary threshold on the Court's competence to deal with war crimes.

62. **Mr. AXWORTHY** (Canada) said that the need for an international criminal court was clear and acute. Most conflicts were non-international and most of the victims were civilians. The most pressing priority of international relations was not the security of States but that of individual citizens.

63. An independent and effective international criminal court would help to deter some of the most serious violations of international humanitarian law. By isolating and stigmatizing those who com itted war crimes or genocide, it would help to end cycles of impunity and retribution. The Court must have jurisdiction over the core crimes of genocide, crimes against humanity and war crimes, and a situation should not be created in which States ratified the Statute without accepting the Court's jurisdiction over a particular crime.

64. The Court would need a constructive relationship with the United Nations, while preserving its independence and impartiality. The Security Council could play a useful role in referring matters to the Court, which, however, should not be paralysed simply because a matter was on the Security Council's agenda. Financing the Court from the regular budget of the United Nations, in the same manner as the human rights monitoring bodies, would ensure broad international support and avoid any financial disincentive to ratification by States parties.

65. The Court should have an independent, highly professional Prosecutor who could initiate proceedings ex officio, without awaiting a State complaint or Security Council referral. Rape, sexual slavery and other forms of sexual violence must be recognized as war crimes in the Statute, reflecting the landmark decision made at the United Nations Conference on Women. Children were often doubly victimized, as civilian victims of war and as child soldiers. The Court should have a mandate to prosecute those who recruited children under the age of 15 into armies.

66. Finally, the mandate of the Court should deal with not only war crimes committed in conflicts between States, but also within States.

67. According to the principle of complementarity, the Court would exercise jurisdiction only where national systems were unable or unwilling to prosecute transgressors. In other words, it would be a court of last resort.

68. Negotiations towards establishing the Court should be as open and inclusive as possible, for which reason Canada had contributed $125,000 to enable delegations from the least developed countries to participate in all phases of the process. It had also funded the attendance of six non-governmental organization (NGO) representatives and the Canadian delegation included two NGO advisers. The international community could not wait for another catastrophe before establishing a permanent body to respond to the atrocities that so often accompanied armed conflicts. As one century drew to a close, the creation of an international criminal court would be a fitting legacy for the next century.

69. Mr. RADITAPOLE (Lesotho) associated himself with the statement made on behalf of the members of the Southern African Development Committee (SADC) and said that his Government had actively participated in efforts to establish an international criminal court. The need for a permanent court was beyond doubt. In addition to strengthening the rule of law by providing certainty and consistency in international investigations and prosecutions, a permanent court would be a bedrock for the emerging system of international criminal justice.

70. Despite progress, a number of unresolved issues remained. His delegation advocated that the Court should be endowed with automatic jurisdiction over the crimes defined in the Statute, without the need for additional State consent. He remained opposed to the so-called "opt-in/opt-out" approach, which would hamper the effectiveness and independence of the Court. According to the principle of complementarity, the Court would be able to intervene only where a national court was unwilling, unable or unavailable to carry out investigations or prosecutions. The assessment of whether a State was "unwilling, unable or unavailable" to prosecute should be left to the Court itself. However, complementarity should not be invoked with the aim of obstructing justice.

71. The Prosecutor's power to initiate proceedings without awaiting referrals by the Security Council or States would help to ensure the Court's independence and that justice was served in cases where the Security Council or States failed to act. There were many procedural safeguards against the unlikely eventuality that the Prosecutor would "run wild".

72. The relationship between the Security Council and the Court raised difficult questions. Although, in theory, no conflict should exist, the Security Council's maintenance of peace and security might either complement or frustrate the work of the Court in bringing war criminals to justice and advancing the international rule of law. He opposed any political interference by the Security Council or States in the affairs of the Court.

73. Finally, the Court would need sufficiently broad powers to ensure that it could request full and timely cooperation from States at every stage of the process.

74. The objective should be to establish a just, fair and effective court that would help replace the rule of force with the rule of law and foster democracy at the international level.

75. Mr. EL MARAGHY (Egypt) said that the draft Statute was an important step forward.

76. The Court should be independent, should not be influenced by political considerations, and precise limits must be set in its relationship with the Security Council. The role of the Security Council in referring matters to the Court must be clearly defined, but it was for the Court to decide whether to commence prosecution proceedings or not.

77. The Court should not be burdened with cumbersome procedures. The Prosecutor should have the power to commence proceedings ex officio, although not as an absolute and unrestricted right. There would have to be some form of recourse against the Prosecutor's decisions.

78. An appropriate financing mechanism for the Court must be found to allow it to pursue its work in an effective and stable manner. According to the principle of complementarity, the Court should commence proceedings only if national courts were unable or unwilling to act.

79. The crime of aggression, the worst crime against humanity, and war crimes should be punishable under the Statute.

80. He attached great importance to the universality of the Convention to be adopted. The possibility of entering reservations might encourage many countries to accede to the Convention. He drew attention to the many options and alternatives contained in the text. Rules of procedure and evidence should be discussed subsequently by a committee to be set up for that purpose.

81. Mr. Tae-Ik CHUNG (Republic of Korea) said that a spate of conflicts had led to heinous crimes against humanity, so that the promotion of individual security was becoming as important as the traditional concept of national security. Bringing to justice the perpetrators of crimes of international concern would serve as an effective deterrent. The adoption of the draft Statute would lead to the achievement of that goal. However, the establishment of the Court should not conflict with but reinforce the judicial sovereignty of States.

82. The Court should be based on independence, effectiveness, fairness and financial soundness and must have automatic jurisdiction over genocide, war crimes, crimes against humanity, and, particularly, crimes of aggression. The definition of war crimes should also cover internal conflicts.

83. The prosecutor should be given ex officio authority to initiate investigations. Otherwise, the effectiveness of the Court would be seriously eroded, and the Security Council might not be able to raise cases owing to the exercise of the veto. Any risk of abuse by the Prosecutor could be countered by introducing effective checks.

84. Although the Security Council should be given the right to refer to the Court a situation in which crimes under the Statute had been committed, that should not compromise the Court's independence. All States parties should also be entitled to enter complaints. The Court must be granted jurisdiction to determine whether the requirement of complementarity with national jurisdiction was met in a specific case. The State party that raised the question of complementarity should bear the burden of proof before the Court.

85. The rights of the accused must also be protected fully in accordance with international standards. The Statute should provide for special treatment of gender-related violence and for the protection of children, witnesses and victims.

86. The cooperation of States parties in the area of enforcement was also a prerequisite to an effective Court. Lastly, the importance of adequate financing should not be underestimated. Initially, the Court's expenses should be met out of the regular budget of the United Nations, later changing to a system of contributions by States parties.

87. **Mr. FRLEC** (Slovenia) said that his Government was deeply convinced of the need for a fair, efficient and independent court. The perpetrators of genocide, war crimes and crimes against humanity must be brought to justice and the rehabilitation of individual victims and war-torn societies should be made possible.

88. The International Criminal Court must be an independent and strong judicial institution, but it was important to bear in mind the primacy of States in investigating and prosecuting crimes committed under international law. When they failed to do so, an international mechanism must be available. The Court would thus be complementary to national courts.

89. The Court should have inherent jurisdiction over the genocide, war crimes and crimes against humanity. States should therefore accept its jurisdiction by ratifying the Statute, without the need for a later opt-in or opt-out system. He favoured the inclusion of the crime of aggression within the Court's jurisdiction.

90. Proceedings before the Court should be triggered by States, the Security Council or an independent Prosecutor, who should be able to use information from any source—from victims as well as from governmental and non-governmental sources.

91. Contemporary armed conflict disproportionately affected civilians, especially women and children, who required adequate protection, both in international or internal conflicts. The Court should therefore also have jurisdiction over war crimes committed in non-international conflicts.

92. Victims and witnesses, as well as suspects or accused persons needed effective protection, based on internationally recognized safeguards. Women and children should be afforded special protection, so that the Court could deal effectively with gender-related and sexual crimes. He hoped that States would recognize that 18 was the minimum acceptable age for participation in hostilities.

93. The Court's work would be seriously undermined if States were allowed to submit reservations to the Statute. The examples of ad hoc tribunals clearly showed that close, genuine and effective cooperation between States and the Court was essential if perpetrators of crimes were to be brought to justice.

94. The International Criminal Court should be financed from the regular budget of the United Nations, which would not pose a threat to the Court's independence.

95. **Mr. CASSAN** (Observer for the Agence de Coopération Culturelle et Technique—ACCT) said that the French-speaking countries had long attached great importance to the question of international justice and to defending the rule of law, democracy and peace. Although the Member States of ACCT had different legal systems, they shared the same legal values and were therefore particularly concerned that the future International Criminal Court should respect the diversity of legal systems and cultures, particularly with regard to procedures.

96. His organization had identified crimes falling within the competence of the Court, namely, genocide, war crimes and crimes against humanity. It also believed that war crimes should include crimes committed in non-international conflicts. The relationship between the Court and the Security Council was also a matter of concern.

97. The international community as a whole could be confident that the French-speaking world supported the establishment of an international criminal court able to defend international law.

98. **Ms. ROBINSON** (United Nations High Commissioner for Human Rights) said that an international criminal court would fight impunity and would make it clear that all those in positions of power and leadership could no longer use terror tactics, systematic rape, ethnic cleansing, mutilation and indiscriminate killing of non-combatants as weapons of war. All individuals, regardless of official rank, were legally bound to refrain from committing genocide, war crimes and crimes against humanity.

99. It had to be admitted that the international community, through the United Nations, had had a poor record in preventing violations of human rights. The means, the political will and an effective weapon against the culture of impunity had all been lacking. To break with the past required the establishment of a court which would be truly fair, compellingly effective and would earn universal respect. The Statute should define with clarity and precision the scope of crimes to come under the jurisdiction of the Court. The Court's role must not be restricted to international conflicts, since the worst atrocities took place in internal conflicts; in particular, rape should be included as a crime.

100. She welcomed the proposal to require the Prosecutor to appoint advisers with legal expertise on specific issues, including sexual and gender violence and violence against children, to ensure that those crimes could be addressed without adding to the suffering of the victims. She strongly urged that the Court be directed to ensure that its interpretation and application of law and principles conformed fully to internationally recognized human rights. The hard-won gains in international human rights law must be safeguarded. Likewise, she looked for provision for rehabilitation of those convicted by the Court. The aim was to deter and protect, not merely to punish. The Statute should also provide for reparations for victims or their families.

101. She expressed the hope that the Conference would make its own special contribution to protecting human rights.

102. **Mr. CRAWFORD** (International Law Commission) said that the draft Statute for an international criminal court prepared by the International Law Commission set forth six main characteristics of the Court.

103. Firstly, it was to be a permanent court sitting as required.

104. Second, it would be created by treaty under the control of the States parties to that treaty, but in close relationship with the United Nations. It would therefore obviate the need for further ad hoc tribunals.

105. Third, it would have defined jurisdiction over grave crimes of an international character under existing international law and treaties. It was, however, recognized that, in certain areas, the law was only partially existent.

106. Fourth, the Court's jurisdiction, except in the case of genocide, would depend on the acceptance of its jurisdiction, by States or on triggering by the Security Council under Chapter VII.

107. Fifth, the Court would be integrated with the existing system of international criminal cooperation. It was not intended to displace existing national systems that were capable of working properly. Hence the principle of complementarity.

108. Lastly, it should offer full guarantees of due process.

109. Since the International Law Commission had drafted those six principles, there had been some significant changes. In particular, the revised draft Statute constituted a major effort to consolidate, expand and develop

substantive international law, relying to only a very limited extent on *droit acquis*. It was encouraging that the international community, in creating a permanent court for the trial of the worst crimes under international law, was prepared to develop and improve upon the law that the Court was to apply. However, praiseworthy efforts to develop the law ought not to stand in the way of creating a viable and effective Court. If necessary, new developments in substantive law, and even new crimes, could be brought within the jurisdiction of the Court as the law progressed.

110. The ILC had always thought that links with the Security Council would be required, in view of the latter's Charter responsibilities. There was some conflict between the need for the independence of the Court and the need to prosecute, arrest and punish the guilty effectively. The ILC's draft article 23 was a conscientious attempt to strike a balance, allowing Security Council reference to the Court, but avoiding a veto by the Council except in cases where it was already taking action under Chapter VII.

111. The original concept of the Court would inevitably have to be developed and refined at the political level. He hoped that the international community was ready for such substantive advances and that they would not obscure the need for effective international procedures for the investigation of crimes and the prosecution and trial of the accused.

112. **Mr. PACE** (Observer for the NGO Coalition for an International Criminal Court) said that the Coalition was a global network of more than 800 organizations working for the establishment of a just, fair, effective, independent and permanent international criminal court. As the Secretary-General had stated in his opening address, the world had come to realize that relying on each State or army to punish its own transgressors was not enough. The issue was whether it could be ensured that those who committed heinous violations of international law and universal moral principles could be brought to justice.

113. Some Governments were still not ready to accept mandatory national and international action against violations of international humanitarian law. It was up to the majority of nations to galvanize the political will to ensure that a strong treaty and a strong court were created.

114. The NGO Coalition had agreed on a statement of basic principles for an international criminal court, including issues of jurisdiction, complementarity, State cooperation and the independence of the Prosecutor. If the Conference were successful in establishing such a court, it would prevent the slaughter, rape and murder of millions of people during the next century. Global civil society and the NGOs present would work tirelessly with Governments and international organizations to achieve such a great historic result.

115. **Mr. KLICH** (Observer for the Movimento Nacional de Direitos Humanos) said that the poor, women, children and indigenous peoples of Latin America were the main victims of systematic violations of human rights and had no real access to justice. All too often, amnesties hindered the establishment of the truth. Political pacts on impunity showed the weakness of judicial systems.

116. A permanent body with global jurisdiction, an international criminal court, was therefore needed to complement domestic systems. It would be a serious error if the relations of the Court with the Security Council echoed those of many judicial systems vis-à-vis interventionist political powers. Neither should the Court depend on the specific consent of different States before commencing its investigations.

117. The Court would make a great contribution to the cause of peace and reconciliation of humanity, because it would establish the truth. In order to pardon an offender, the nature of the offence had to be known, to forget the

past, paradoxically it had to be remembered dispassionately, and to bring reconciliation, individual responsibility had to be established.

118. **Ms. BOENDERS** (Observer for the Children's Caucus International) said that gross acts of violence against children should be brought within the jurisdiction of the Court, which must have expertise in the protection of children, both as witnesses and victims. They were also victims when manipulated by adults to commit acts of war.

119. Despite the Geneva Conventions and their Protocols and the Convention on the Rights of the Child, children under the age of 15 were found in national armies and, more commonly, in armed rebel groups. They might also be sexually abused. The definition of war crimes must consider the full range of children's participation and not be limited by the words "direct" or "active". She strongly recommended the inclusion in the Statute of a ban on recruiting and allowing children under 15 to take part in hostilities.

120. The International Criminal Court would not be an appropriate forum for the trial of children who committed crimes against others. It should have no jurisdiction over persons under the age of 18 at the time of committing crimes which would otherwise have come within the jurisdiction of the Court. With its punitive purpose, the Court was fundamentally at odds with the rehabilitative purpose of international standards on juvenile justice. That did not mean that crimes carried out by children would go unpunished. The Court could impose accountability on adults who used children to commit crimes. Where adults deliberately used children to commit crimes within the jurisdiction of the Court, or targeted them as victims, that should be considered an aggravating factor in passing sentence.

121. The protection of children in armed conflict would be achieved only through a strong and effective court, with an independent Prosecutor and universal and inherent jurisdiction over core crimes.

The meeting rose at 6.10 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/SR.3
20 November 1998

ORIGINAL: ENGLISH

SUMMARY RECORD OF THE 3rd PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 16 June 1998, at 10 a.m.

President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-125

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the plenary meetings of the Conference will be consolidated in a single corrigendum.

V.98-57498 (E)
99-80792 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. ROGOV** (Kazakhstan) said that his country, which had attained its independence with the collapse of the Soviet empire, was extremely concerned to maintain and consolidate its sovereignty. Because it desired independent protection for its fundamental institutions, Kazakhstan supported the creation of an international criminal court.

2. The United Kingdom representative had expressed concern about extradition proceedings in connection with the establishment of such a court. Kazakhstan's Constitution did not entirely rule out the extradition of its citizens. However, it believed that maximum account must be taken of universal human rights and also of the sovereignty and independence of each State.

3. Kazakhstan supported the creation of an international criminal court as an independent judicial body, with clearly defined jurisdiction and mechanisms for criminal prosecution. It also supported the proposals for the Statute. The Court should be an independent international organization in relationship with the United Nations through agreements adopted by the States parties.

4. The crimes falling within the Court's jurisdiction should be clearly defined and genocide, crimes against humanity and military crimes and aggression should unquestionably be included, but only on the basis of such a clear definition.

5. Kazakhstan considered that extending the Court's jurisdiction to drug trafficking did not accord with the principle of complementarity, since it was not always possible for national judicial systems to punish such crimes. As far as genocide and military crimes were concerned, the Court should take action at the initiative of States and the Security Council. For other crimes, the consent of the State on whose territory or against whose interests the crime was committed would be necessary.

6. The Court should be funded by contributions from States. But since not all States were able to make such contributions, such costs should be covered in the first stage out of the United Nations budget with the approval of the General Assembly. Kazakhstan considered it the sovereign right of every State to enter reservations in signing and ratifying the Statute. But, on questions of jurisdiction, initiating prosecutions, financing and other matters, the right to reservation should be limited, since it might undermine the international jurisdiction of the Court. Each State should be able to decide on the degree to which it should participate in the Court.

7. **Archbishop MARTINO** (Holy See) said that any international criminal court must protect the dignity of the human person, a dignity shared by all irrespective of age, race, ethnic origin, status as a combatant or non-combatant, sex or stage in human life, from the unborn to the elderly. The Statute and the crimes falling within the Court's jurisdiction must reflect that equal dignity.

8. The principle of *suum cuique*: to each person his due, was therefore an important one in the justice dispensed by an international court. In the words of His Holiness Pope John Paul II, the recognition that the human person was by nature the subject of certain rights that no individual, group or State might violate was an essential principle

of international law. Those who had been harmed were owed the protection of the law and those responsible for the heinous crimes to be dealt with by the Court must be held accountable in accordance with universal norms. But the Court must be conceived as a means not of seeking revenge but of finding reconciliation. In handing down its sentences the Court must always bear that goal in mind, and the Holy See was convinced that the death penalty had no place in the Court's Statute.

9. That Statute must also ensure the Court's independence from political concerns and pressures, especially those reflecting the particular rather than the universal, the exclusive rather than the inclusive. All were equal before the law, and the place in the proposed Statute of rules based on political rather than juridical considerations was questionable.

10. **Mr. MULADI** (Indonesia) said that the Court's effectiveness would depend on universal accession by States to the Statute, and that, to ensure the acceptability of the Statute, a set of fundamental issues had to be resolved in accordance with the aspirations of a majority of States. Those issues included the definition and implementation of the principle of complementarity, the so-called "trigger mechanism", the integrity and independence of the Court and the list of crimes under its jurisdiction.

11. The recent Ministerial Meeting of the Non-Aligned Movement in Cartagena had emphasized that adoption of the Statute by consensus would be the best way of guaranteeing the Court's universal character. Indeed, the rules of procedure stated that the Conference should endeavour to ensure that its decisions were reached by general agreement.

12. In drafting the Statute, the Conference must uphold the principle of respect for national sovereignty and join the emerging consensus that the Court's jurisdiction should be complementary to that of national courts and based on the consent of the States concerned. The countries of the Non-Aligned Movement considered that the principle of complementarity was fundamental and should apply to all the provisions governing the Court.

13. The aim of complementarity was to ensure that the Court would act to bring to justice the perpetrators of heinous crimes only when national justice systems were unavailable to do so. However, that principle still had to be defined unambiguously. Further intensive negotiations were still required, notably on when the Court's mechanism should be activated, whether the Court should unconditionally respect the principle of *ne bis in idem*, including decisions already made by national judicial systems, or whether it should be granted the power to act as an international supreme court delivering judgement on the credibility of national courts.

14. Those questions were political, not legal ones. But to safeguard the Court's credibility and impartiality they should be resolved by the Conference, not left to the Court itself to decide.

15. The Court would require both adequate resources and freedom from political intervention if it were to be effective. Without universal support, it would lack the capability and capacity to discharge its mandate or enforce its decisions. The Statute must therefore guarantee that all States parties had equal rights and obligations with respect to the jurisdiction of the Court.

16. At the Cartagena meeting, the Non-Aligned countries had reaffirmed that the Court must be independent of political influence of any kind, including that of the United Nations and in particular the Security Council, which must not direct or hinder its functioning. They had also stressed the need to set up a suitable method of funding the Court and to ensure respect for the principle of *nullum crimen sine lege*.

17. **Mr. BOUGUETAIA** (Algeria) said that there was a clear need for an effective and objective international court to deal with crimes under international law, which would obviate the necessity for ad hoc tribunals. The Court had to have guarantees of independence and impartiality.

18. The Court would be the more credible and find wider acceptance if its scope was limited. It should therefore focus on the core of serious crimes that threatened international peace and security. Terrorism and drug trafficking should be included in the list of crimes within its jurisdiction.

19. The principle of complementarity would play an important part in arriving at a proper balance between the jurisdiction of the future International Criminal Court and that of national courts. Clearly, the latter must have the right to exercise their jurisdiction with respect to the crimes listed in the draft Statute in full sovereignty. The court would replace them only in the event of proven shortcomings.

20. Moreover, the Court would have to cooperate with States, the major players on the international political scene, in strict respect for the authority and competence of each, so as to ensure acceptance and universality.

21. **Mr. TELIČKA** (Czech Republic) said that the Court should have inherent jurisdiction over the four core crimes of genocide, war crimes, crimes against humanity, and aggression, which were regarded as crimes under customary international law. In accordance with the principle of universal jurisdiction over crimes under international law, no further State consent should be required before the Court could proceed. He proposed that war crimes committed in non-international armed conflict should also come under the jurisdiction of the Court.

22. His delegation supported a mutually complementary relationship between national criminal jurisdiction and the jurisdiction of the Court. Complementarity did not diminish the responsibility of States for the vigorous investigation and prosecution of crimes. His delegation could not accept the idea that, if a national justice system investigated or prosecuted a case, the Court should not be entitled to exercise jurisdiction, for that interpretation of the complementarity principle would seriously undermine the Court's effectiveness. The Court must be equipped with a safeguard against sham investigations and trials.

23. The question of the role of the Security Council had provoked heated debate in the Preparatory Committee. His delegation agreed that an act of aggression might not be prosecuted under the Statute unless the Security Council had first determined that a State had committed such an act, but could not support the idea that the Security Council should have the power to prevent proceedings before the Court if the situation was being dealt with by the Security Council itself under Chapter VII of the Charter. Chapter VII situations were precisely those in which crimes within the Court's jurisdiction were most likely to be committed. The role envisaged for the Security Council would radically change and indeed undermine the independence of the Court.

24. His delegation believed that the Prosecutor should be empowered to initiate proceedings before the Court of his or her own accord. That would make the Court more effective and would open it up to inputs from various sources, including non-governmental organizations and individuals.

25. One of the most important issues in the Statute was the part dealing with rules of international cooperation and judicial systems. His delegation considered that the Statute must oblige all States parties to comply strictly with any request for assistance issued by the Court. No exception should be allowed to that fundamental rule; the Statute should contain a provision barring any reservations that would enable States parties to evade that obligation. That was the best way to ensure equality of obligations and to eliminate potential stumbling blocks.

26. Mr. KOUAKOU BROU (Côte d' Ivoire) said that the proposed Court must be independent and universal. No State or other body should have the right to interfere in its operations. The independence of the Court would in no way affect the prerogatives of the various organs of the United Nations, which, on the contrary, by remaining outside legal matters, would lose none of their essential functions in the service of international peace and security.

27. With regard to the crimes provided for under the Statute of the Court, his country considered it essential to maintain the principle of complementarity to preserve the sovereignty of States and ensure the Court's universality.

28. Mr. ASMANI (United Republic of Tanzania) endorsed the statement made by the South African representative on behalf of the South African Development Community.

29. The International Criminal Court had to be truly independent, effective, impartial and permanent. It must not become a tool for the political convenience of States.

30. The regime of human rights derived its legitimacy from their universality, and the same would apply to the Court. Some aspects of the idea of sovereignty were a potential bar to the common will to punish heinous crimes, but the Court must ensure that State sovereignty became a concept of responsibility and international cooperation rather than an obstacle to the enjoyment of universal human rights.

31. Useful proposals had been made for balancing the responsibilities of the Security Council under the Charter on the one hand and the role of the Court for the independent determination of individual culpability on the other, and needed to be pursued seriously. Since the Court was being established to address the most serious international crimes, the customary distinction between international and non-international armed conflict needed re-examination so as not to justify the exclusion from the Court's jurisdiction of the serious crimes frequently committed in internal armed conflicts.

32. The role of the Security Council in relation to the Court had to be approached with great care. The preservation of the Court's integrity must be the overriding concern of the Conference. In that connection, his delegation saw a role for an independent Prosecutor who, subject to specified safeguards, would have ex officio powers to initiate investigations and prosecutions, and the integrity of whose office would discourage the submission of frivolous claims.

33. His delegation subscribed to the complementarity regime between the Court and national judicial systems and agreed that primary jurisdiction lay with national courts. However, in view of the events leading to the genocide in Rwanda, it considered that, in the event of a dispute on jurisdiction, the Court should be the final arbiter.

34. His Government looked forward to the establishment of a Court that would have the widest support and participation of States and for a close alliance between the Court and the United Nations. He hoped it would be an institution that would be able to act when national courts could not do so or were seen as being ineffective.

35. Mr. WANG Guangya (China) said that his Government believed that the Court, to be independent and fair, should not be subject to political or other influence, and should not become a tool for political struggle or a means of interfering in other countries' internal affairs. However, it should not compromise the principal role of the United Nations, and in particular of the Security Council, in safeguarding world peace and security. The provisions of its Statute should not run counter to those of the United Nations Charter, and the Conference should be prudent in dealing with the relationship between the Court and the United Nations and the role of the Security Council.

36. His Government believed that universal participation was essential for the authority and effectiveness of the Court. In order to ensure such participation, the Statute should be based on the principles of democracy and equality and should give expression to the positions and views of all countries. It should be adopted by consensus rather than by vote. Maximum flexibility should be exercised in defining the jurisdiction of the Court, the crimes that could be prosecuted, and the modes in which countries accepted the Court's jurisdiction.

37. Complementarity was the most important guiding principle of the Statute and should be fully reflected in all its substantive provisions and in the work of the Court, which should be able to exercise jurisdiction only with the consent of the countries concerned. Its jurisdiction should not apply when a case was already being investigated, prosecuted or tried by a given country.

38. His Government considered that a cautious approach should be adopted when addressing such questions as trigger mechanisms and means of investigation, in order to avoid irresponsible prosecutions that might impair a country's legitimate interests. In carrying out its duties, the Court would rely on the cooperation of the countries concerned but should respect their sovereignty, security and basic principles of law.

39. Mr. BIRKAVS (Latvia) said that despite the clear need for an international criminal court, the Statute must not be pushed through just for the sake of creating a symbolic entity. The Court must be viable and effective, operating in conjunction with other institutions: it must really work.

40. The Statute should clearly define the Court's jurisdiction, spelling out the crimes of a serious nature with which it would deal, including the crime of aggression.

41. The Court should be financed from the regular United Nations budget, supplemented by voluntary contributions as needed. The ability to pay expenses promptly and in full was essential if the Court was to be viable and effective. A diversified source of funds was the best possible guarantee of the Court's financial security, and would also ensure its universality by encouraging financially weaker States to become parties to the Treaty. The Statute should address budgetary considerations to ensure that all States as well as the Court itself were able to initiate proceedings without incurring undue financial burdens. Justice should be available to all regardless of their financial means.

42. The Court should have the same jurisdiction over core crimes as States currently had under international law, in accordance with the principle of universal jurisdiction. His delegation supported the idea that ratification of the Treaty would signify immediate acceptance of the Court's jurisdiction over the core crime. Since a permanent international criminal court would have no law enforcement capacity at its disposal, cooperation and judicial assistance by States would be vital to its smooth functioning.

43. His delegation fully endorsed the position that the Court was intended to complement national criminal justice systems only in cases where those systems were not available or were ineffective, and agreed that the Court should have the authority to determine whether that applied. The Statute should include a detailed definition of the principle of complementarity and of the procedures to be applied by States and the Court in determining jurisdiction and associated issues.

44. Mr. VERGNE SABOIA (Brazil) said that reaching a minimum common denominator in drafting the Statute was not an acceptable solution. If States decided to create a court, they should give it the power and the means to play a significant role in international life, but the Court must in no way weaken or jeopardize existing conventional or customary rules of international law. It was also necessary to encourage universal participation, and the aim

should be to achieve a proper balance between different national positions with respect to certain key provisions of the Statute.

45. With respect to the initiation of proceedings before the Court, Brazil considered that, in addition to the rights of States parties and of the Security Council to trigger the Court's jurisdiction, there should be an independent Prosecutor with the authority to initiate investigations ex officio or on the basis of information received from various sources. However, to avoid frivolous politically motivated complaints, the Statute should provide adequate safeguards on the Prosecutor's discretion.

46. The Court's jurisdiction should be limited to the most serious crimes of concern to the international community. Brazil favoured inherent jurisdiction over the crime of genocide, but believed that there were convincing arguments for retaining some kind of "opt-in" mechanism for the other core crimes. Observance of the distinction between acceptance of the Court's Statute and its jurisdiction would help signatories to expedite ratification procedures and promote universal acceptance.

47. The Court's relationship with the Security Council remained a matter of concern to many delegations. Brazil believed it necessary to remove justification for the creation of new ad hoc tribunals by the Security Council, which would require a provision such as draft article 10 (1). The Court should not, however, act as a subsidiary organ of the Security Council and must aim for the highest level of judicial independence. Only in exceptional circumstances should it be prevented by the Security Council from investigating or prosecuting cases when the Council, acting under Chapter VII of the Charter, took a formal decision to that effect. Even in such cases, however, the Court should not be prevented from exercising its jurisdiction for more than a limited period.

48. Mr. PAKALNIŠKIS (Lithuania) said that his country considered that the Court must be given inherent jurisdiction over the crimes listed in the Statute but only in cases where national courts were unable or unwilling to proceed. The Court should be given the power to decide whether it was able to exercise jurisdiction over certain crimes.

49. The Court's jurisdiction should apply to genocide, war crimes, crimes against humanity, and aggression. As a party to the Geneva Conventions of 1949, Lithuania endorsed the list of crimes set out in those Conventions. In negotiations on the laws applying to armed conflicts and the definition of serious violations, it was in favour of recognizing a deliberate change in the demographic situation of occupied territories as a crime. Moreover, rape, sexual abuse and other forms of sexual violations should be recognized as war crimes and crimes against humanity. Lithuania was also in favour of including war crimes committed during internal armed conflicts in the crimes listed in the Court's Statute.

50. One of Lithuania's major objectives was to include aggression as a crime against peace, since experience showed that an act of aggression often led to genocide, crimes against humanity and war crimes.

51. His delegation was in favour of a short definition including clear legal criteria in determining the substance of a crime. In view of the political sensitivity of the issue, it agreed with the principle of empowering the Security Council to determine aggression.

52. The Conference had to create an institution independent of the political power of States or other bodies and able to adopt fair and impartial decisions. The independence of the Court would be reinforced by empowering the Prosecutor to start investigations ex officio. The right to review such investigations should be vested only in the Court.

53. The Security Council, acting in accordance with Chapter VII of the Charter, would play an important role in referring cases to the Court but it should not be able to interrupt or suspend the Court's proceedings; such action should be possible only by the Court's own express decision. That would provide the basis necessary for States to cooperate with the Court. The Statute of the Court should spell out the obligation of States to cooperate with it, and at the same time should indicate the forms of cooperation, and, if agreed, the grounds for any refusal to cooperate.

54. Mr. HERMOZA MOYA (Peru) said that his country had been involved in the work of the Preparatory Committee; its participation in the present Conference demonstrated its support for the establishment of an international criminal court to bring to justice those accused of the most serious crimes.

55. Peru believed that the International Criminal Court should be permanent and independent. It must be complementary to domestic systems of justice. Peru also supported the principle of the broadest possible judicial cooperation. Given the importance of the subject, the agreements to be reached at the Conference should be adopted by consensus.

56. Ms. ZAMFIRESCU (Romania) referred to the text of her delegation's statement indicating its position.

57. A permanent, universal, independent and strong international criminal court empowered to prosecute and convict persons responsible for genocide, crimes against humanity and war crimes would not only overcome the disadvantages of ad hoc tribunals but also act as a potential deterrent.

58. The purpose of the new Court was to ensure that persons guilty of the most heinous crimes did not go unpunished. A balance had therefore to be struck between the jurisdiction of the Court and that of national criminal justice systems, in accordance with the carefully worded formula in the draft Statute before the Conference.

59. The efficiency of the Court would depend on the universality of its jurisdiction, based on the will of States to give full cooperation and comply with the Court's requests for assistance and with its judgements.

60. Cost-effectiveness was important but it was also important not to water down achieved standards of respect for human rights. Unless the Court were independent and strong, it could not be effective. Although separate, it should not, however, be entirely separable from the other bodies of the United Nations system dealing with matters relevant to its activity. It was proper that, under Chapter VII of the Charter, the Security Council should be able to refer to the Court situations in which crimes coming under its jurisdiction appeared to have been committed and gone unpunished.

61. Flexibility and compromise were essential in the current exercise, but she hoped that the Conference would do more than agree on the lowest possible common denominator. Moreover, it was essential to ensure that the Court was given the necessary financial resources to do its work.

62. She hoped that ratification would be swift so that the Court could come into operation as soon as possible, preferably before the third millennium. Her delegation agreed that The Hague would be the proper seat for the Court.

63. Mr. WAKO (Kenya) reaffirmed Kenya's commitment to the establishment of an effective, impartial, credible and independent international criminal court, free from political manipulation, pursuing only the interests of justice, with due regard to the rights of the accused and the interests of the victims. For the Court to be universal, the

remaining unresolved issues must be addressed comprehensively, and a proper balance struck. There must therefore be a strong political will on the part of the States parties that would sign and ratify the Statute. Consensus was the only way to guarantee the early establishment of the Court and preserve its integrity and universality. His delegation would support all efforts to that end.

64. The principle of complementarity was central to the basic notion of the international criminal justice system. While primary responsibility for prosecuting those who committed crimes rested with each State and the International Criminal Court should not act where effective national criminal justice systems were in place, it should certainly do so where such systems were not available or were ineffective.

65. The serious crimes over which the Court would have jurisdiction had to be spelt out clearly and exhaustively.

66. The Prosecutor played an essential role in the Court and his or her functions were critical. The Prosecutor's powers to investigate and initiate prosecutions ex officio should be clearly defined in order to avoid the risk of abuse. His or her accountability should be safeguarded by a strict review of procedure conducted by a pre-trial chamber vested with powers to ensure that no charges were brought without good cause.

67. The relationship between the Security Council and the Court needed to be clarified to ensure that the independence and legitimacy of the Court were not undermined. A suitable mechanism for financing the Court had to be set up in order to preserve its independence.

68. Parallel with the attempts to establish an international criminal court, national institutions to preserve and embody the rule of law and effective democratic systems at all levels must be strengthened. The World Conference on Human Rights in Vienna had called upon the international community to assist developing countries in their efforts to strengthen their institutions in their justice administration systems, including the courts. Since the primary responsibility for enforcing any penal system lay with States, efforts must be made to strengthen such national institutions.

69. Mr. SHARSHENALIEV (Kyrgyzstan) supported the concept of an international criminal court with its seat at The Hague.

70. Such a court should not be used in any country's political interests, and membership should involve full recognition of its competence. That in no way lessened the responsibility of States to investigate crimes and initiate criminal proceedings.

71. The Court should complement national legislative bodies and should have competence in matters of genocide, military crimes and crimes against humanity. Kyrgyzstan supported the proposal to extend the Court's jurisdiction to terrorism, illicit drug trafficking and crimes against United Nations personnel. It also supported the appointment of a strong Prosecutor with powers to initiate proceedings ex officio where sufficient grounds existed, and believed that that would not infringe the rights of the Security Council.

72. Ms. NAGEL BERGER (Costa Rica), speaking as a woman and as Minister of Justice of her country, stressed the need to give the Court full powers to deal with all crimes in which the dignity of women was violated. The Statute must therefore include the crimes of rape, sexual slavery, prostitution and forced sterilization, as well as the recruitment of minors into the armed forces.

73. The Court's structure and machinery should be given a proper gender perspective, and provision should be made for adequate representation of both women and men in all its structures. Advisory legal services in matters affecting women and children and a special unit for victims and witnesses were needed if the Court were to function properly.

74. The list of crimes falling within the Court's jurisdiction should cover all serious violations of human rights, including genocide, war crimes and crimes against humanity. The concept of war crimes must include all those committed during internal conflicts and covered by the 1977 Additional Protocols to the 1949 Geneva Conventions. In view of the deplorable experience of Latin America, the Court should also be able to deal with the crime of forced disappearances. Moreover, it should have competence in matters of international terrorism, drug trafficking and crimes committed against United Nations personnel, and should be enabled to deal with other crimes, such as aggression, in the future.

75. The Court must be truly impartial and free from political interference, and should therefore not be subordinate to the Security Council. However, the Security Council should be able to refer situations for its consideration when peace and security were involved, even when the States concerned did not explicitly accept the jurisdiction of the Court.

76. Moreover, the Court should be competent to judge the most serious crimes wherever they might have been committed. Ratification by a limited number of States should suffice to give the Court universal jurisdiction. Her delegation did not agree that ratification by the States directly concerned should be a prerequisite for the exercise of jurisdiction. It was also opposed to additional declarations by such States either on ratification or in connection with a particular case.

77. The Prosecutor should be truly independent and competent to initiate investigations ex officio on the basis of reliable information from any source, including non-governmental organizations, and ways should be explored of enlisting the cooperation of such operations and of the survivors of serious crimes.

78. The Court must complement the work of national justice systems and should be able to try cases when States were unwilling to adjudicate or when their systems were not independent or impartial. It could not, however, be a substitute for local courts or remove the State's primary obligation to administer justice.

79. The human rights of accused persons, victims and witnesses must be respected, and Cost Rica therefore firmly opposed the death penalty.

80. The Court's judges should be widely versed in criminal and international law, human rights and matters affecting women and children. They must be experienced and mature, and age should be no bar to their election.

81. The Court could be effective only if it had the full support of all States and was given the financial and human resources necessary for its operation.

82. Mr. BAIBOURTIAN (Armenia) said that, despite the existence of international instruments governing the law of war, there was in practice no real mechanism to punish individuals guilty of war crimes. The Court would help to plug that gap and no Government should have the power to intervene, or to reduce or reject its sentences.

83. Armenia agreed that the Court should have jurisdiction over genocide, crimes against humanity wherever committed, war crimes, and serious violations of humanitarian law in both international and non-international

armed conflict, as well as over crimes of aggression and terrorism. However, a clear definition in the Statute was needed for each of the crimes over which the Court had jurisdiction so as to avoid misunderstandings and differing interpretations in the future.

84. For instance, under Article 51 of the Charter, a State had the right to self-defence, but in some cases that right could be interpreted as an act of aggression. That might also be true when the right of self-determination was asserted by a region within the territory of a State. A clearer definition of aggression was therefore needed.

85. With respect to the definition of acts constituting aggression, Armenia would like to see the definition of blockade expanded to include the blockade of the ports, coasts, territory and air routes of one State by the armed forces of another.

86. Armenia believed that the Court should have automatic jurisdiction over the crime of genocide.

87. The Court should be independent of the Security Council and of any States. States must not refuse to provide the Court with the information it required and must be obliged to comply with court orders. The Court must have the power to determine whether a State had complied in full with a court order. All States parties must give the Court the same cooperation and assistance that their authorities provided to their national courts. There must be effective guarantees for the protection of witnesses, victims and their families.

88. Since States were rarely willing to hold their own citizens, especially those holding political or military positions, accountable for crimes they might commit, his delegation supported the provision in the draft Statute giving limited but sufficient power to the Court to determine when States were unwilling or unable to act in a specific situation. That did not mean that the Court must act only when a national institution failed to do so, but, if an institution able to exercise jurisdiction existed, it would not be necessary for the Court to intervene. The Court should have the authority to determine whether there was such an effective national court.

89. Armenia was in favour of an independent Prosecutor able to initiate an investigation based on his or her findings or on information obtained from any other source, independently of a Security Council referral or a State complaint.

90. It also supported the idea of establishing a court with an independent international personality but working in close cooperation with the United Nations institutions. The United Nations should finance the establishment of the Court, and States parties should assume the financial burden only after a predetermined number had ratified the Treaty.

91. **Mr. AYUB** (Pakistan) said that his country supported the establishment of a Court which was independent, effective and enjoyed universal acceptance. However, since the Court should complement and not supplant national legal systems, Pakistan endorsed the principle of complementarity. The Court should exercise jurisdiction only if national trial procedures were not available or were ineffective, in order to preserve national sovereignty and avoid conflicts between the jurisdiction of the Court and that of the State. The exercise of jurisdiction by the Court should be based on the consent of the States concerned. The principle of complementarity must not be eroded, if the Statute were to enjoy universal acceptance.

92. Subject to that principle, Pakistan wished the Court to be impartial and independent of political influence of any kind. It was therefore not in favour of giving a role in the functioning of the Court to any organ of the United

Nations, in particular, the Security Council, which was primarily a political body, since that might cloud the Court's objectivity.

93. Pakistan favoured the principle that the trigger mechanism should be activated by the State concerned, since it alone was in a position to determine whether it had the competence to try the offender itself or would refer the case to the Court if it determined that the national jurisdiction would fail to deliver justice.

94. His delegation supported the concept that the Court's jurisdiction should be limited to the core crimes of genocide, serious violation of the laws and customs applicable in armed conflicts and crimes against humanity. However, the scope of those crimes needed clear definition.

95. Adoption of the Statute by consensus would facilitate both universal adherence and early entry into force.

96. **Mr. AL-KULAIB** (Kuwait) said that an international criminal court must be effective and independent. It should deal with crimes such as genocide and war crimes, and its mandate, and hence the text of the Statute, must be absolutely clear. The Court must be complementary to domestic legal systems and not try to supersede them.

97. His delegation endorsed the views of the speakers who had called for the inclusion of sexual violence, including acts of aggression against women in the course of war crimes, rape, sexual slavery and paedophilia in the Court's term of reference.

98. The draft Statute was still somewhat equivocal concerning the powers of the Prosecutor. His delegation believed that the Prosecutor must have a broader role but that decisions as to whether or not to prosecute should be open to appeal.

99. His delegation believed that the United Nations should provide permanent financial support for the Court.

100. **Mr. BERNHARDT** (Observer for the European Court of Human Rights) said that the offences over which the International Criminal Court would have jurisdiction must be clearly defined in order to achieve the full effect of deterrence, avoid any doubts as to jurisdiction and ensure respect for the principle of legality.

101. He urged the Conference not to accept the option under article 75 (e) of the draft Statute, which envisaged the death penalty.

102. The notion of complementarity called to mind the principle of subsidiarity which lay at the heart of the system of the European Convention on Human Rights. The European Court's message had always been that subsidiarity was a means of ensuring that national courts played their rightful role as far as possible, thus making adjudication at the international level unnecessary. The true function of complementarity in the proposed system of international criminal jurisdiction should be to encourage the competent national courts to carry out their duties, but, if they failed to do so, to ensure that there was no escape for the perpetrators of atrocities.

103. On the issue of optional jurisdiction, the experience of the European Court showed that an effort should be made to secure agreement on compulsory jurisdiction for core crimes. The effective protection of victims and potential victims required compulsory jurisdiction from the outset.

104. He believed that the principle that the Prosecutor should be allowed to trigger the Court's jurisdiction of his or her own accord was important, if not essential, for the effectiveness and credibility of the institution.

105. **Ms. KIRK McDONALD** (Observer for the International Criminal Tribunal for the Former Yugoslavia) said that participants in the Conference should draw upon the experience of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, which provided a wealth of information concerning the application of international humanitarian and criminal law.

106. An international code of criminal procedure combining aspects of civil law and common law had been created by the ad hoc Tribunals. She urged the Conference to consider the importance of including among the judges persons with prior judicial experience both in national and international criminal trials.

107. Experience in the Yugoslavia Tribunal had shown that the unequivocal obligation to comply with orders, not just requests, by the Court was essential. Grounds for refusing to comply should not be allowed. Moreover, it was essential that the ICC Prosecutor and defence counsel be able to conduct interviews and on-site investigations on the territories of States, without any unwarranted interference by a national authority.

108. The Tribunal's rules allowing for separate and dissenting opinions had proved highly beneficial to the development of international criminal law, and the availability of differing interpretations of that embryonic body of law had contributed to its maturation. She therefore hoped that there would be a full debate on that matter and that earnest consideration would be given to the bracketed proposal in article 72.6, which would allow for dissenting opinions.

109. She hoped that the Court would be effective and be vested with the necessary power to ensure that the parties and judges had access to all the relevant and appropriate evidence necessary to reach a just verdict. It was absolutely vital that the Court be endowed with the component of compulsion.

110. **Mr. KAMA** (Observer for the International Criminal Tribunal for Rwanda) said that his experience had shown it to be important that ICC judges be involved in the adoption of the procedures or have the possibility of amending them, given the practical difficulties they would undoubtedly encounter.

111. The experience of the ad hoc Tribunal showed that most of the evidence received had been in the form of testimony, and that it was essential to give adequate protection to witnesses before, during and after the trial, to ensure that they would agree to appear in court to answer questions. The protection of witnesses should be left to the Court unless it concerned a State party to the trial.

112. Another issue of major importance was cooperation by States at all stages. It must be possible to draw the Security Council's attention to actions carried out with the support of a State party.

113. He hoped that the establishment of the Court would not involve so many compromises as to make it ineffectual. What was needed was a court independent of political and other outside legal considerations, with a Prosecutor who would act independently.

114. **Ms. BONINO** (Observer for the European Community) said that there was a particular need for an international criminal court at a time when many barbaric local wars were being waged. Conflicts between national armies had been replaced by bloody internal and ethnic conflicts where civilians were not accidental casualties but the primary target of attacks, where crimes against humanity and even genocide were not just a means but a purpose of the conflict, and where the minimum standards of humanity agreed under international humanitarian law were violated as a matter of policy, not by accident.

115. The Court should have jurisdiction over a core group of crimes: genocide, crimes against humanity and war crimes, including those committed in the course of civil wars and other internal conflicts. It should have a constructive relationship with the Security Council and other international institutions. Moreover, it should have a strong, effective, highly qualified Prosecutor independent of Governments. It should have adequate procedures to ensure its fair operation, to safeguard the rights of the accused and witnesses. The Statute of the Court should have no provision for the death penalty.

116. **Mr. MARTINEZ** (Observer for the Inter-Parliamentary Union) said that the Statute of the Court would be subject to ratification. In most countries that would require action by the national parliament, which embodied the sovereignty of the State and, in a democratic system, was the most legitimate institution, representing civil society as a whole.

117. One of the key issues which parliaments examined when considering the ratification of an international agreement was how and to what extent national sovereignty was affected. Members would therefore pay particular attention to the concept of complementarity governing the Court's relationship with national courts. Most would agree that alleged criminals should normally be tried in their own national courts. It was precisely because that was not always effective that an international court was needed. The draft Statute laid down the principle that the proposed Court was intended to be complementary to national criminal justice systems in cases where such trial procedures might not be available or might be ineffective; that was a very important innovative concept.

118. The intent and content of that principle must be enunciated with the greatest possible clarity. Every State would want to know the circumstances in which its citizens might be brought to justice before an international criminal court. To achieve early ratification, the Statute must be clear, but every effort should be made to avoid the Court's becoming a token mechanism and to make it an effective tool for the defence of the rule of law throughout the world.

119. It was therefore extremely important that the Statute should be clear, unambiguous and juridically perfect. That would condition its chances of gaining the support of national parliaments, which would expect it to be no less high in technical quality than the legislative texts they considered daily; that would ultimately affect the extent of its implementation and the functioning of the Court. He intended to recommend to the Union's governing bodies, which would meet in September that year, that the Inter-Parliamentary Union—the world organization of national parliaments—should undertake a campaign amongst all its members to achieve the early ratification and entry into force of the proposed Statute.

120. **Mr. FERENCZ** (Observer for Pace Peace Center) said that limited ad hoc courts created after an event were hardly the best way to ensure universal justice: a permanent court was needed for permanent deterrence. Outmoded traditions of State sovereignty must not derail the movement towards establishing an international criminal court. Ever since the Nuremberg judgement, wars of aggression had undeniably been not a national right but an international crime. The Charter prescribed that only the Security Council could determine when aggression by a State had occurred, but it made no provision for criminal trials. No criminal statute could expand or diminish the Council's vested power. Only an independent court could decide whether an individual was innocent or guilty, and excluding aggression from international judicial scrutiny was to grant immunity to those responsible for it.

121. Carefully selected judges and prosecutors subject to public scrutiny and budgetary controls must be given the authority to carry out their task. To condemn crime yet provide no institution able to convict the guilty would be to mock the victims. An international criminal court—the missing link in the world legal order—was within the grasp of the Diplomatic Conference.

122. **Mr. SANE** (Observer for Amnesty International) said that abuses against women had been widespread in the conflict in Bosnia and Herzegovina. To combat rape as a weapon of war and crimes against humanity, Amnesty International called for the establishment of a permanent international criminal court, which should meet sixteen fundamental criteria, of which he would highlight two.

123. First, if the Court were to be an effective complement to national courts, it must have the right to exercise the same universal jurisdiction over genocide, other crimes against humanity and war crimes as each of the States parties to the Statute had under international law. Each of those core crimes were now crimes of universal jurisdiction. Any State might and in some cases must permit its courts to exercise jurisdiction over a person suspected of having committed one of those crimes and bring anyone responsible for it to justice, no matter where the crime was committed. It might do so without the consent of the State with custody of the suspect, the State where the crime was committed, the State of the victim's nationality, the State of the suspect's nationality or any other State. There was therefore no legal reason why the proposed new Court should not have the same powers.

124. Second, if the Court were to be effective, its judgements must be accepted as scrupulously fair and impartial by all sectors of the international community. Therefore, the Statute and the Rules of Procedure and Evidence must ensure that suspects and the accused had the right to a fair trial in accordance with the highest international standards.

125. Amnesty International, which had more than 1 million members and supporters throughout the world, agreed with the Prosecutors of the International Criminal Tribunals for the Former Yugoslavia and Rwanda that if the Court were weak and powerless, it would not only lack legitimacy but would betray the very human rights ideas that had inspired its creation. Amnesty International believed that such a court would be worse than no court at all, but it was confident that the Conference would create a court that it could support rather than one that it would oppose.

The meeting rose at 1.25 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/SR.4
20 November 1998

ORIGINAL: ENGLISH

SUMMARY RECORD OF THE 4th PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 16 June 1998, at 3 p.m.

President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-78

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the plenary meetings of the Conference will be consolidated in a single corrigendum.

V.98-57499 (E)
99-80822 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. MINOVES TRIQUELL** (Andorra) said that, as a country with a 720-year-old record of peace and a long tradition of democracy, freedom and respect for human rights, one which for centuries had served as a safe haven for refugees fleeing the ravages of war, Andorra was, as a matter of principle, fully committed to participation in the establishment of an international criminal court.

2. In order to ensure the establishment of a Court with a strong Statute, a balance must be struck between the jurisdiction of the Court and that of the State. The Court must be empowered to take action, on a complementary basis, when national criminal justice systems failed to function effectively. The Prosecutor consequently played a crucial role and should be in a position to initiate investigations, subject to legitimate safeguards. The Court's jurisdiction must apply to all States which accepted its Statute. Regarding the definition of crimes coming within the Court's jurisdiction, Andorra was deeply concerned about acts which affected children and young people in particular. The question of certain crimes whose repercussions were the subject of current debate in many societies should be approached in good faith. Defining the relationship between the United Nations and the Court was important in strengthening and legitimizing the work of the Court. The respective competence of the Court and the Security Council must be carefully appraised so as to reconcile the former's independence with the latter's prerogatives. Andorra reaffirmed its opposition to the death penalty. On a different matter, it would seek to ensure balanced linguistic access to the work of the Court.

3. That morning, within the context of the Conference, Andorra had joined the group of what had been termed "like-minded States" whose general views in favour of an effective and strong court it shared. It hoped that the establishment of the International Criminal Court would serve to contain and eradicate the bloody conflicts which debased mankind and caused much unnecessary suffering.

4. **Mr. YEE** (Singapore) stressed the importance of creating a court which dispensed justice in accordance with the highest legal standards and would therefore have the credibility and moral authority essential to its effective functioning. Particular care must be taken to ensure that, while those who perpetrated crimes of grave concern to the international community were brought to justice, fundamental norms of due process, such as respect for the rights of the accused and the establishment of guilt according to strict evidential standards, were upheld. The principle of *nullum crimen sine lege* must apply in defining precisely what conduct entailed criminal responsibility, so that individuals could be fully aware of the consequences of their actions. Whereas the Court must be endowed with the flexibility to contribute to the progressive development of legal principles, that must be distinguished from the power to create offences.

5. Realism dictated that the aim should not be to establish a court of human rights of the kind that existed in Europe or the Americas, for other regions were still a long way from establishing such institutions, but, rather, to give tangible recognition to the fact that some acts were so universally abhorred that their perpetrators should not escape punishment, either by national criminal justice systems or, when they were non-existent or failed to act, by an international judicial body.

6. Since the Court would not have its own enforcement agencies and its effectiveness would depend upon the cooperation of States parties, universal participation should be sought, but at the same time account must be taken of the diversity of regional interests, different stages of development and social and cultural traditions, and the positions of the major powers, in order to achieve a broad consensus and build an effective, working institution.

7. Mr. BAJA (Philippines) said that his country aspired to the establishment of an international criminal court that would dispense justice efficiently and effectively; an institution that was ineffective in addressing the problem of impunity of the perpetrators of the most heinous violations of the laws of humanity would not serve justice nor help maintain international peace and security. The Philippines' position, consistent with its constitutional and legal traditions, was based on those considerations and on its desire to uphold the current evolution of international law.

8. National judicial systems should have primacy in trying crimes and punishing the guilty. The Court should complement those systems and seek action only when national institutions did not exist, could not function or were otherwise unavailable. The Court should have jurisdiction over the core crimes of genocide, war crimes, crimes against humanity and aggression, but its Statute should contain an additional provision allowing for the future inclusion of other crimes that affect the very fabric of the international system.

9. The Prosecutor should be independent and be entitled to investigate complaints *proprio motu*, subject to the safeguards provided by a supervisory Pre-Trial Chamber. The use of weapons of mass destruction, including nuclear weapons, must be considered a war crime. The definition of war crimes and crimes against humanity should include special consideration of the interests of minors and of gender sensitivity. The Statute should provide for an age below which there was exemption from criminal responsibility, and persons under 18 years of age should not be recruited into the armed forces. The sexual abuse of women committed as an act of war or in a way that constituted a crime against humanity should be deemed particularly reprehensible. The crime of rape should be gender-neutral and classified as a crime against persons. A schedule of penalties should be prescribed for each core crime defined in the Statute, following the principle that there was no crime if there was no penalty, which would also meet the due process requirement that the accused should be fully apprised of the charges against them and of the penalties attaching to the alleged crimes.

10. The Philippines supported the positions set out by the States members of the Movement of Non-Aligned Countries at the recent ministerial meeting in Cartagena, and was prepared to make the necessary changes to its national laws required by the establishment of the Court.

11. Mr. MILO (Albania) said that public opinion was increasingly concerned about the failure of the international community to prevent the continuing serious violations of international humanitarian law and punish those who committed them and the political leaders who were directly responsible for them. The perpetrators of the Serbian massacres in Bosnia were still unpunished, and the same crimes were being repeated in Kosovo, where the genocidal massacres by the Serbian authorities were a consequence of an institutionalized policy of genocide and State terrorism carried out through the military, paramilitary and police machinery against Albanians. The Albanian people of Kosovo were prey to a policy of ethnic cleansing, and their resistance to that policy in self-defence could never be identified with terrorism. The international community's slow or inadequate response to such crimes tended to cast doubt on the effectiveness of international institutions. Security Council recommendations had not only failed to prevent the violence and terror in Kosovo but had even won time for the Serbian authorities to launch large-scale ethnic cleansing operations.

12. For those reasons, Albania strongly advocated investing the International Criminal Court with universal jurisdiction over such crimes as genocide and ethnic cleansing, war crimes, whether international or domestic,

aggression and other crimes against humanity. In an era of globalization, a growing range of crimes could be regarded as crimes against humanity and against international peace and security, including institutionalized State terrorism and certain global aspects of organized crime.

13. Albania was in favour of compiling a list of crimes subject to the jurisdiction of the International Criminal Court, in order to discourage all criminal abuses of human rights, create the conviction that such crimes could not go unpunished and support efforts to maintain international peace, security and stability. The Court should be fair, active and effective and should be able to safeguard and re-establish justice, rehabilitate victims of such crimes and assist in the establishment of normality.

14. The Court must have integrity, autonomy and independent jurisdiction, on the basis of existing international guarantees and means of coercion such as those provided for by the Charter of the United Nations and also other complementary guarantees, particularly in cases where the principle of complementarity with national law and judicial systems was inapplicable. The efficiency of the Court would depend largely on the political will and cooperation of States and, first and foremost, on the constructive cooperation of the permanent members of the Security Council and their agreement to involve the Court in their efforts to maintain peace and security. They should guarantee the Court's jurisdiction in judging crimes against humanity and their perpetrators, while also ensuring follow-up to the Court's recommendations on post-crisis situations.

15. **Mr. BAUDIN** (Senegal) said that the creation of supranational jurisdiction over the crimes of genocide, grave and repeated gross violations of human rights, war crimes and crimes against humanity was the tangible expression of a universal awareness that such crimes should no longer go unpunished. That would open the way to safeguarding the rights of the human person. The Conference, overcoming selfish national interests while taking account of the diversity of judicial systems, should lead to the establishment of an effective, permanent court, independent of any political structures.

16. Senegal subscribed to a number of principles embodied in the Dakar Declaration adopted by a majority of African States. The Court should be permanent and universal in character and should embody the fundamental principles of international criminal law. It should be complementary to national courts and be independent of any political structure, including the Security Council and States. It should be effective, just and impartial. The Court should have an independent prosecutor, who should be able to initiate proceedings ex officio and without hindrance, subject to the existence of a Pre-Trial Chamber to guarantee the legality of the prosecution proceedings. The Court's jurisdiction should extend, as a minimum, to genocide, war crimes and crimes against humanity. It should furthermore ensure respect for the rights of the defence and safeguard the interests of victims. Acceptance of reservations to the Statute would undermine the effectiveness of the Court.

17. The values of justice and peace lay at the heart of the initiative to establish an international criminal court—peace as the key to stability and the consolidation of democracy and the rule of law, and justice as a deterrent against acts of revenge committed when crimes were seen to go unpunished. By adopting the Statute of a permanent, independent, effective, transparent and non-selective international criminal court, the Conference would be leaving an enduring legacy to future generations.

18. **Mr. AL BUNNY** (Syrian Arab Republic) said that the peoples of the world were looking with trust and optimism to the establishment of an independent international criminal court—the forerunners of which had been ad hoc tribunals. The Court to be set up should dispense justice, protect rights and equality and spare none of the criminals who had flouted the most basic human values and violated international law. It must be an international judicial body with locally circumscribed competence and an expression of the international will represented in the

General Assembly, with a clearly defined relationship to the United Nations, but with independence from the Security Council. The Court's jurisdiction should cover the crime of genocide, crimes against humanity and war crimes committed in international conflicts, in accordance with the 1949 Geneva Conventions and the 1977 Protocols. The Court should be able to prosecute the perpetrators of aggression, as a crime against peace, but subject only to the definition of the crime of aggression contained in General Assembly resolution 3314 (XXIX) of 1974. To include crimes for which there was as yet no accepted definition would be contrary to the overriding principle of *nullum crimen sine lege*.

19. Furthermore, the inclusion of other crimes which came within the jurisdiction of national courts would confuse matters of greater importance with those of lesser importance and also raised the question of complementarity. In order to preserve national sovereignty, the Court should have complementary jurisdiction only when national courts were unable to act. The action taken by the Prosecutor in initiating proceedings must be subject to a special mechanism that would guarantee the legality of proceedings. Transparency, integrity and credibility were crucial attributes of the Court, which must furthermore have full financial independence. It should not be financed from the United Nations budget, but by the States parties to the Convention, in accordance with specific criteria.

20. **Mr. SCHMIDT-JORTZIG** (Germany) said that the Conference offered a real opportunity for the world community to take a major step forward. A strong, independent and effective international court, without loopholes in its Statute, was needed to ensure that the worst crimes against humanity could no longer go unpunished. In that context, Germany fully supported the statement made by the United Kingdom as holder of the Presidency of the European Union. Germany was committed to the creation of a court with automatic universal jurisdiction over core crimes, including war crimes in internal conflicts. The principle of complementarity should be observed, and the Court should have a strong and independent Prosecutor. Furthermore, all States parties should cooperate without reservation. His delegation proposed that the crime of aggression should be included in the list of core crimes, having due regard for the role conferred on the Security Council by the United Nations Charter. In accordance with historical precedent, the definition of that crime should focus on indisputable cases of aggression.

21. Two of Germany's main concerns were automatic jurisdiction over core crimes and the independence of the Prosecutor. In an interdependent, globalized world, States must accept the Court's jurisdiction over the core crimes; sovereignty would be better served by cooperation than by futile attempts to stand alone. The system of complementarity incorporated in the draft would not entail the loss of sovereignty but would help stop the gaps which had enabled the worst criminals to escape punishment. Germany was committed to the concept of universal jurisdiction over the core crimes in order to promote the rule of law in international relations. No compromise that made it possible for a State to choose where to accept the rule of law and where to disregard it would be acceptable.

22. It should not be left to States alone to decide whether a matter might be investigated. Although provision should be made for proper judicial control in the investigative stages, the Prosecutor should be entitled to initiate investigations without having to wait for a complaint by a State.

23. **Mr. ZALAMEA** (Colombia) said that it was significant that the Rome Conference was being convened at a time when the world was celebrating the anniversaries of the adoption of major international and regional human rights instruments. The Conference's remit, to adopt the Statute of a permanent international criminal court, would make good one of the major institutional omissions in the international legal order. The draft Statute provided an appropriate legal basis for an effective, independent and impartial court.

24. The jurisdiction of the Court should cover the most serious international crimes, recognized as such in international law. The Statute must set out clear and precise rules as to the conditions in which the mechanism for international investigation and prosecution would be set in motion. Such jurisdiction should be complementary to, and not a substitute for, national criminal justice systems.

25. In respect of article 108 of the revised draft Statute on the settlement of disputes, Colombia proposed that the International Court of Justice at The Hague should be entrusted with the settlement of disputes relating to the interpretation or application of the Statute. However, disputes relating to the competence of the Court should be settled by the Court itself.

26. The Conference had a historic responsibility and faced a considerable challenge in meeting the legitimate desire for justice of peoples who had suffered from horrendous crimes such as genocide, war crimes or crimes against humanity.

27. **Mr. DE MATOS FERNANDES** (Portugal), endorsing the views expressed by the United Kingdom on behalf of the European Union, said that the establishment of an international criminal court was a necessary guarantee of respect for fundamental human rights. It would show that the lessons of history had been learned and, as the world entered a new century in an era of globalization, would constitute tangible recognition of the need for effective means to bring to justice those responsible for the most serious crimes under international law. The jurisdiction of the Court should cover the core crimes of genocide, war crimes and crimes against peace and humanity. It was not a matter of transferring jurisdiction from national courts, but of enabling the Court to intervene wherever national judicial systems were non-existent or unable or unwilling to take action. The Court alone should decide on the verification of such situations.

28. The crimes defined should include sexual abuse, particularly of women, and the use of children as soldiers. Portugal remained flexible with respect to extending the list of violations covered by the Court's jurisdiction according to established review mechanisms and experience gained, to include other crimes which seriously undermined the fundamental values of humankind. It was in favour of including the crime of aggression, provided that it was clearly defined. The Court's jurisdiction should not, however, be extended unduly, at the risk of detracting from its effectiveness, prestige and authority. The recent practice of establishing ad hoc tribunals should not be continued. The Statute should enhance the position of its judges by ensuring their total independence and protecting them against all forms of pressure.

29. The Prosecutor should be independent of any organ or entity, should be subject to safeguards of objectivity and legality and should have the power to initiate investigations ex officio. It would not be conceivable for national courts to have wider jurisdiction than that of the International Criminal Court. Indeed, as interdependence among nations had grown, the concept of sovereignty had evolved significantly. Portugal strongly supported the establishment of a permanent, just and credible court. There should be no provision for the death penalty, and attention should be paid to the position of victims, and to the admissibility of compensation. The success of the Court's action would depend on the broadest and most expeditious cooperation possible between the States parties and the Court.

30. A unique opportunity was at hand to provide the international community with the legal means to bring to justice and punish those who practised extermination in the most serious conflicts, including those waged within States. Practical expression must be given to the principle that no one was above the law by creating an instrument which recognized equality among all persons.

31. **Mr. KAFANDO** (Burkina Faso) said that the Conference, and the Statute it would be adopting, were of paramount importance in punishing barbarities, such as the genocide in Rwanda and the former Yugoslavia. The limitations of the ad hoc tribunals set up in connection with those tragedies had demonstrated the need for a permanent international court, which would also serve as a deterrent to potential criminals.

32. The convening of the Conference was the culmination of a long process of codification of legal rules for safeguarding peace and security and the protection of human rights; non-governmental organizations (NGOs), particularly humanitarian bodies, had played a catalytic role in the process. Burkina Faso was determined to join others in overcoming outstanding difficulties and ensuring universal accession to the Statute. The establishment of an international criminal court was now a matter of urgency and a duty towards present and future generations.

33. Burkina Faso had proved its commitment to basic human rights through its own institutions and through its steadfast efforts—currently as Chairman of the Organization of African Unity (OAU)—to seek solutions to the crises affecting the African continent, some of which had given rise to the crimes to be covered by the jurisdiction of the Court.

34. Considerations of particular concern to Burkina Faso were the principle of complementarity with national courts, the Prosecutor's initiative in triggering proceedings, the independence of the Court from any political body, particularly the Security Council, and the Court's competence for the definition of war crimes. The Court should be financed in accordance with the scale of assessments system in force at the United Nations.

35. **Mr. TATSII** (Ukraine), stressing the importance of establishing an international criminal court to further strengthen and develop international law and establish the principle of the punishment of the most serious crimes, said that the draft Statute provided a sound basis for consensus.

36. Ukraine attached particular importance to the principle whereby the Court would be called upon to intervene in cases where national judicial procedures were unavailable or ineffective, but would not be a substitute for national courts. Ukraine agreed that the Court must have jurisdiction over the most serious international crimes against peace and humanity. Ukraine, a once-powerful nuclear State, had voluntarily surrendered its nuclear potential and therefore strongly supported the idea of establishing criminal responsibility for acts related to the use of nuclear weapons. It was also in favour of including crimes against United Nations and associated personnel in the list of crimes covered by the Statute. There should be a large number of ratifications of the Statute to ensure that the Court would be effective and widely recognized. The Court must be funded by the States parties so as to ensure its independence. Ukraine agreed that the Court should be located at The Hague.

37. **Mr. ASAMOAH** (Ghana) said that the establishment of an international criminal court would be a fitting conclusion to a century in which countless human lives had been lost. There was an urgent need to seek a quick, effective and unbiased international response to crises that had the potential for genocide, crimes against humanity and other such crimes. In Rwanda, as elsewhere, many lives could have been spared if the international community had acted promptly. Ghana urged the family of nations to focus critically on the establishment of criteria for a collective response to crisis situations, but the establishment of an international court should not be regarded as an end in itself.

38. If the International Criminal Court were to be a credible judicial institution, it must be based on a number of essential principles. It must have inherent jurisdiction over the core crimes of genocide, crimes against humanity and war crimes. The requirement of State consent as a precondition for the exercise of jurisdiction would render the Court ineffective and was unacceptable. Crucial to the credibility of the Court and to its universal acceptance

were provisions guaranteeing its independence and impartiality. It must not supplant national criminal justice systems, nor act as a supervisory body over such systems, but should be able to investigate and prosecute where national systems were unable or manifestly failed to act. The Court must be sensitive to gender issues in situations of armed conflict, and relevant provisions must be incorporated into the mainstream of the Court's functions. The principles on which the Court was based should reflect the current state of international law and the reality of international society.

39. The challenge was to create a universally acceptable, fully functional and effective court with a human face, which enjoyed the confidence of both the accuser and the accused, met the demands for justice of both victims and the international community and had the capacity to facilitate peace and stability.

40. **Mr. MICHALEK** (Austria) said that Austria's position was reflected in the statement made on behalf of the European Union. More specifically, he added that the tragedies in Rwanda and the former Yugoslavia had emphasized the need for such a court, since the two ad hoc tribunals were no substitute for a permanent institution. A truly effective, independent and permanent court would play a major role in upholding the principles of justice and the rule of law. A particular advantage would be its preventive role, through its deterrent effect on potential criminals, thereby strengthening efforts to maintain peace and stability in the world.

41. The Court should have jurisdiction over the core crimes of genocide, crimes against humanity and war crimes, and also crimes of aggression, although the difficulty of finding a generally acceptable definition of the latter should not delay the establishment of the Court. Austria also supported the inclusion of crimes of sexual violence committed in armed conflict.

42. The Court should be complementary to national criminal justice systems, acting not as a substitute, but only where national systems were unable or unwilling genuinely to investigate a crime and prosecute where the facts so warranted. The establishment of the Court did not, therefore, absolve national systems of their primary responsibility to act effectively.

43. An effective, mandatory system of State cooperation was a prerequisite for an effective court; any grounds for refusal of cooperation would have to be explicitly enumerated in the Statute. Requests by the Court should in principle be given priority over requests from States, and sentences should be effectively enforced by States parties that had expressed their willingness to accept convicted persons. The procedural provisions must ensure the fair and effective operation of the Court, safeguard the rights of the accused and ease the procedure of giving evidence by victims. Consideration should be given to requiring States parties to secure proof, especially through the preparation and registration of refugee reports.

44. **Mr. SPASOV** (The Former Yugoslav Republic of Macedonia) said that an international criminal court would fill a gap in the international legal system, would give a clear signal to the perpetrators of serious crimes that they would be brought to justice, and would help guarantee universal respect for human rights and fundamental freedoms. The criminal justice system in the Republic of Macedonia had all the prerequisites for effective observance of international conventions and for the prosecution of international criminals. It had been agreed in the Preparatory Committee that the Court should be an independent, permanent institution open to all States and that it should have an international legal personality with the competence to bring persons to justice for the most serious crimes. He hoped that States would demonstrate the necessary political readiness to reach agreement on outstanding issues.

45. The establishment of the International Criminal Court would also give strong impetus for the further development of international penal law and for international cooperation in combating serious crimes, especially organized transnational crime. His Government accepted the principle that complementary jurisdiction would operate when national courts were unable or unwilling to act, and when it was obvious that a national court's decisions were partial. The Court should be independent of political influence and the influence of States or international bodies and should have jurisdiction over the four core crimes of genocide, crimes against humanity, war crimes and the crime of aggression. Subject to agreement by the Conference, the Republic of Macedonia would accept the inclusion of terrorism and illicit trafficking in narcotic drugs and psychotropic substances in the list of crimes. The Prosecutor should be independent and have the power to initiate investigations ex officio, on the basis of information from relevant sources. The Security Council should be authorized to initiate investigations before the Court, and its prior decision that an act of aggression had been committed by a State should be a condition for initiating proceedings. The death penalty should be excluded. His Government considered that the basic principles of penal proceedings contained in the draft Statute were consistent with international standards and decisions. States parties should consistently carry out their obligations under the Statute, in cooperation with the Court, and no reservations to the Statute should be allowed after its adoption.

46. The system of international criminal justice should be further elaborated, in particular by developing instruments of mutual assistance in the suppression of crimes and by unifying material and procedural law, thus eliminating obstacles to the effective implementation of international criminal justice.

47. Mr. LAHIRI (India) stressed India's constructive participation in efforts for the progressive development and codification of international criminal law. The only durable basis for the development of such international cooperation was scrupulous regard for the fundamental principles of the United Nations Charter, notably the sovereign equality of States, non-discrimination and non-interference in internal affairs. India fully endorsed the view of the Movement of Non-Aligned Countries agreed at the ministerial meeting held in New Delhi, the declaration agreed by the Non-Aligned Movement group in New York and the resolution of the Asian-African Legal Consultative Committee, which had stressed that the International Criminal Court should be based on the principles of complementarity, State sovereignty and non-intervention in the internal affairs of States, and that its Statute should be such as to attract the widest support and acceptance of States, State consent being the cornerstone of the Court's jurisdiction.

48. It was unrealistic to conceive of inherent or compulsory jurisdiction for the Court in view of the widely diverging views on the specific elements of certain crimes, the proposed inclusion of elements from multilateral instruments to which several States were not parties and the absence of consensus on the current status of customary international law with respect to several of those crimes. India accordingly favoured the approach of optional jurisdiction adopted by the International Law Commission in its draft of the Statute.

49. It was generally agreed that the Court's jurisdiction should be complementary to the primary jurisdiction of nation States, and that the Court could intervene only when a national judicial system was non-existent or unable to deal with the crimes covered by the Statute. That was in conformity with the principles of territorial jurisdiction and the sovereignty of States. It was understandable that the Court should intervene in exceptional situations, but it would be a travesty of the concept of complementarity to expect States with well-established and functioning judicial and investigative systems to have to prove constantly the viability of their judicial structures, failing which they would be overridden by the International Criminal Court.

50. The competence and authority to initiate the jurisdiction of the Court rested with States, particularly those with a direct interest in a given matter; it was inappropriate to vest an individual prosecutor with the power to initiate

investigations *proprio motu*. A clear distinction should be made between the sovereign authority of States and the professional role of a prosecutor. The approach of ad hoc tribunals could not constitute a precedent or be considered automatically applicable to a permanent international criminal court.

51. The Court must be entirely impartial and independent of political processes. Legally, the function of the Court was international criminal justice, not the maintenance of international peace and security. There was no legal basis on which the Security Council could either refer matters of peace and security to the Court or veto action by the Court. Any pre-eminent role for the Security Council in triggering the Court's jurisdiction constituted a violation of sovereign equality and of equality before the law because it assumed that the five veto-wielding States did not by definition commit the crimes covered by the Court's Statute or, if they did, that they were above the law and possessed *de jure* impunity from prosecution. The anomaly of the composition and veto power of the Security Council could not be reproduced in an international criminal court.

52. The crimes coming within the jurisdiction of the Court should be defined precisely in the Statute. The function of the Conference was to establish an institution, not to develop and codify substantive international law. Prudence and the requirement of securing universal support dictated that the Conference should not become involved in elements over which there were clearly diverging views. India strongly supported the inclusion of terrorism in the jurisdiction of the Court.

53. **Mr. DABOR** (Sierra Leone) called for a fair, effective, independent, impartial and unfettered international criminal court. The success of the Conference would lie in its ability to guarantee the Court's independence. It was imperative that the Court should have inherent jurisdiction and that the Prosecutor should be empowered to initiate investigations *proprio motu*, failing which the Court would be subordinated to a generalized veto power. The Prosecutor must be able to receive information from victims and intergovernmental and non-governmental organizations to trigger investigations and prosecutions. The Court must be sensitive to and respect the rights of victims.

54. The Court should have jurisdiction over genocide, war crimes and crimes against humanity, and also over aggression, subject to an agreed definition of the crime. The Security Council should be able to refer situations to the Court but should not be able to exercise any veto, nor unilaterally cause indeterminate delays to the Court's proceedings. Full and prompt cooperation by States was essential. Trials must be conducted in a speedy and just manner. The Court's independence must also be assured in terms of funding. The acceptance of funding by a particular State would detract from its independence, since it would have to rely on economically stronger States, which might discourage ratifications and would be disadvantageous to smaller and less developed countries. The best solution would be to finance the Court from the United Nations budget.

55. His country had for seven years been undergoing a bloody war in which barbaric acts had been committed by rebel forces; the perpetrators of such acts would not have gone unpunished if there had been an independent international criminal court. Cooperation in the finalization of the Statute, and its ratification, would testify to the common desire to overcome the failures of national legal systems and would provide an opportunity to contribute to international stability and the prevention of atrocious crimes.

56. **Mr. TJIRIANGE** (Namibia) endorsed the statement made by the representative of South Africa on behalf of the Southern African Development Community (SADC). In view of the atrocities the world had witnessed during the previous century and Namibia's own recent history, his Government supported the establishment of an effective and independent international criminal court.

57. The International Criminal Court should not be subjected to political decisions of the Security Council. It must be completely independent, to the same degree as the International Court of Justice. The Security Council might, however, refer matters to the Court in accordance with its mandate for the maintenance of international peace and security. The Court must have inherent jurisdiction over the core crimes of genocide, crimes against humanity, war crimes in international and non-international armed conflicts and aggression. A State party accepted the Court's jurisdiction over those crimes upon ratification of the Statute, and no further State consent should be required for referring a matter to the Court.

58. The independence of the Prosecutor was of great importance to the effective operation of the Court; he or she must be able to initiate investigations and institute prosecutions *proprio motu*, subject to appropriate judicial scrutiny. The effectiveness and credibility of the Court would, finally, depend on cooperation from States parties.

59. **Mr. ABDULLAH** (Afghanistan) reaffirmed his delegation's support for the establishment of an international criminal court. In the previous 20 years, his country had been a victim of aggression and the theatre of violations of humanitarian law, first by the former Soviet Union and more recently by the Taliban mercenaries with the direct participation of foreign militia and military personnel. The acts committed by the former constituted war crimes or crimes against humanity, while the latter continued to perpetrate war crimes, crimes against humanity and genocide. United Nations resolutions had gone unheeded. Those tragic events were evidence of the need for an independent, credible and impartial court which should not be hostage to a political body. Political considerations and the geostrategic and geoeconomic interests of Security Council veto-holders should not prevent the Court from condemning aggressors. The world needed to establish a historical record of major international crimes, if only to establish the truth and to educate future generations, in order to deter potential criminals and avoid the repetition of such crimes. Aggression should accordingly be among the core crimes within the inherent jurisdiction of the Court.

60. The Court should conduct its work independently of the Security Council. Any impediment to the independent exercise of justice would damage the credibility of the Court, especially in the eyes of victims. He warned against the danger of the selectivity and double standards that prevailed in the assessment of human rights in the world. The jurisdiction of the Court should be limited to the core crimes of aggression, genocide, war crimes and crimes against humanity, while leaving open the possibility of broadening the scope of its jurisdiction through periodic amendment of the Statute.

61. The Court should play a complementary role in relation to national courts, and the unavailability and inefficacy of national courts should be properly defined in order to avoid conflicts of competence and infringement of the sovereign rights of independent States.

62. Agreement among the parties to a conflict based on the "forgive and forget" principle for the purpose of national reconciliation should be respected by extra-national institutions, since there were times when even justice might not serve its own purpose. In some cases, amnesties could provide a mechanism to facilitate the restoration of the rule of law and the normalization of situations of conflict and hostility.

63. **Ms. MARISCAL DE GANTE Y MIRÓN** (Spain) said that she attached importance to several issues. She agreed that the Court should have jurisdiction over the core crimes that were abhorrent to human conscience. Being aware of the difficulties of including the crime of aggression, Spain remained open-minded to any initiatives that might emerge from the Conference, without calling in question the competence of the Security Council. It strongly supported the principle that the Court should be subsidiary or complementary to national judicial systems, and should operate as a court of last resort when a national system was unable to meet its responsibilities. The Court

must be free from any suspicion of politicization or partiality; its personnel must be highly qualified and independent. The same attributes were required of the Prosecutor. On the subject of the structure and functions of the Office of the Prosecutor, Spain was in favour of the principle of legality, but would not oppose the inclusion of certain elements of the principles of expediency and timeliness, subject to controls. It was further in favour of States cooperating as closely as possible with the Court, and that included third States, because obligations in the area of human rights formed part of *jus cogens*, which did not entail interference in internal affairs. The Statute of the Court should not depart from those new concepts in criminal law, which went beyond the traditional criminal law framework in terms of relations between the State and the criminal by including the rights of victims. Particular attention should be paid to special situations in which the victims were the most vulnerable sectors of the civilian population, such as women and minors.

64. **Mr. GÓMEZ** (Chile) said that the intended establishment of an international criminal court reflected a clear ethical attitude on the part of the international community to the impunity which had prevailed in so many cases of serious crimes. Existing judicial mechanisms, based primarily on the action of national courts, had shown their limitations, causing scepticism and distrust, particularly among victims. A truly effective international criminal court would help deter future offenders and enable the law to play its role as an instrument of peace and social order.

65. The Court should not be a substitute for national judicial systems, but should complement them. It must be independent of any external influence, political or otherwise, whether by States or by international organizations. Its independence would attest to its credibility and effectiveness. Independence should also be ensured by its funding mechanisms. Chile stressed the need for accession by the largest possible number of States to the Statute and hence for a harmonization of different positions, but not at the price of setting up a court which lacked the ways and means for performing its functions effectively.

66. The mechanisms under which the Court would exercise its jurisdiction should be sufficiently flexible. International experience of other judicial bodies had shown that unduly strict requirements of that nature seriously weakened their effectiveness. The Court should therefore have inherent jurisdiction with respect to all crimes recognized under the rules of general international law. Crimes such as genocide, war crimes, whether committed in international or internal conflicts, and crimes against humanity should fall within its jurisdiction. The list of crimes should also include crimes against women, especially those involving sexual violence, and also the serious crime of forced disappearance of persons. Not only States and the Security Council but also the Prosecutor should be empowered to initiate proceedings. Chile attached great importance to the role of the Prosecutor, and to provisions on cooperation and judicial assistance. The effectiveness of the Court would depend to a large extent on the cooperation of States. Because of its recent history, Chile attached crucial importance to the unrestricted respect for human dignity and to the need to punish effectively crimes that constituted serious violations of that dignity.

67. **Mr. HASSOUNA** (Observer for the League of Arab States) expressed support for the principle of including the crime of aggression in the list of crimes within the jurisdiction of the Court, taking into account the definition of aggression contained in General Assembly resolution 3314 (XXIX) of 1974 and the distinction between aggression and the rights of the peoples to armed struggle. The definition of war crimes should include grave violations of the Geneva Conventions of 1949, and of the additional Protocols of 1977. There being no agreed definition of the crime of terrorism, the League of Arab States would prefer not to see that crime included in the Statute, but should the Conference intend to include it, it might be guided by the definition of the crime of aggression and the crime of terrorism laid down in the 1998 Arab Convention on combating terrorism. To be free from any political influence, the Court must be independent, particularly of the Security Council, whose role should

exclude intervention in judicial work and should be confined to lodging complaints and referring them to the Prosecutor, without prejudice to any country's right to file a complaint. The Security Council should not have the right to interfere in investigations and trial proceedings. The Prosecutor should be fully independent but should not be entitled to trigger proceedings without specific judicial controls. Evidence must be based on legitimate procedures as the best guarantee for the integrity of investigation. Finally, there was no need for a specific provision concerning the settlement of disputes arising from the interpretation or application of the Statute or any reservations to it.

68. **Mr. SOMMARUGA** (Observer for the International Committee of the Red Cross—ICRC) said that, by virtue of its mandate to work for the faithful application of international humanitarian law, his organization supported moves to set up effective mechanisms for the punishment of serious crimes. Although States must continue to bear primary responsibility for instituting legal proceedings, and indeed greater efforts must be made to encourage them to meet their existing obligations and bring suspected war criminals before their own courts, the present system had shortcomings, and the impunity of war criminals could no longer be tolerated. Within the complementary roles of the International Criminal Court and national courts, the future Court should be endowed with full powers to discharge its responsibilities. No backward step should be taken in relation to existing international humanitarian law.

69. The Court must have jurisdiction over war crimes committed in all types of armed conflicts, international or otherwise. The war crimes to be listed in the Court's Statute must include the most serious violations of Additional Protocols I and II to the 1949 Geneva Conventions.

70. The Court should have inherent jurisdiction over genocide, crimes against humanity and war crimes. It should be competent to try such cases when a State became party to the Treaty establishing the Court. By virtue of the principle of universal jurisdiction, any State had the right, and in many cases the duty, to exercise its jurisdiction or extradite suspected war criminals, without have to secure the agreement of other States. To require the additional consent of States before a case could be referred to the Court would clearly be a retrograde step in respect of existing law. War criminals should not enjoy legal protection from prosecution.

71. The Prosecutor must be empowered to initiate investigations and institute proceedings *proprio motu*, while complying with the principle of complementarity. Reiterating the firm support of ICRC, the custodian of the Geneva Conventions, for the process under way, he said that the establishment of an international criminal court would also send a clear message to the perpetrators and potential perpetrators of such violations and help to promote national reconciliation in countries beset by violence.

72. **Mr. JESSEN-PETERSEN** (Office of the United Nations High Commissioner for Refugees), speaking on behalf of the High Commissioner, said that atrocities in Sierra Leone, the former Yugoslavia and the Great Lakes region highlighted the critical importance and relevance of a permanent international criminal court. The United Nations High Commissioner for Refugees (UNHCR) joined other humanitarian agencies through the Inter-Agency Standing Committee in expressing its support for the establishment of such a court, which would crucially complement the work carried out by the humanitarian agencies. Mass human rights violations were today a major cause of humanitarian crises, but the international community's efforts had focused on the consequences of such crises, though little had been done to tackle their underlying causes. Any permanent court could help prevent future atrocities and also promote reconciliation in societies emerging from conflict.

73. UNHCR believed that the Court could ensure more effective implementation of the "exclusion clause" whereby individuals who had committed certain crimes were excluded from international protection as refugees,

by providing more authoritative guidance on the interpretation of that clause and by making sure that those so "excluded" were brought to justice. The Court's Statute must also cover war crimes committed during internal conflicts. UNHCR urged that the Court's jurisdiction over war crimes should extend to armed attacks against civilians, *inter alia* in United Nations-declared "safe areas", denial of humanitarian assistance, and forced displacement with the deliberate aim of achieving ethnic homogeneity in a given geographical area.

74. The jurisdiction of the Court should also extend to attacks against humanitarian workers. UNHCR was often the unfortunate witness to atrocities and was committed to cooperating so far as possible with any future court in sharing information which might help to bring the perpetrators to justice, while at the same time it had a responsibility to protect its staff and safeguard its operations. For that reason, it was important that the Court should provide adequately for witness protection, and the non-disclosure and inviolability of United Nations records.

75. **Mr. OUEDRAOGO** (Observer for the Interafrican Union for Human Rights) said that the Union joined with its partners in the World Coalition for the International Criminal Court in supporting the establishment of an independent, impartial, strong and universal criminal court. The Court's independence was crucial. Its staff must be above suspicion and the Prosecutor must not be subject to any outside influence. The Court must receive sufficient, constant funding, free from any pressures. The Court should be able to intervene unrestrictedly and its jurisdiction should extend to any place at any time. Following the example of the negotiations on banning anti-personnel mines, when neither the Security Council nor the United Nations Commission on Disarmament had been directly involved, the process to establish the International Criminal Court should also be free of any such involvement. The momentum created by African regional meetings held in connection with the establishment of an international criminal court and at the Summit of Heads of State and Government of OAU should help to ensure the establishment of an independent, permanent, universal and accessible court. The Interafrican Union for Human Rights, together with its partners, had organized an international coalition for a criminal court, and a forum had been established by several international human rights NGOs to call for such a court. The Court should fill the gap in national and regional jurisdictions, and its actions should be facilitated and accepted by States. It should be strong but just, impartial and accessible, should have sufficient resources, eradicate impunity, render justice, create scope for freedom and forge trust between citizens and governments for the real development of States.

76. **Ms. RISHMAWI** (Observer for the International Commission of Jurists—ICJ) said that the Court should have jurisdiction over the three core crimes of genocide, war crimes and crimes against humanity. Although the ICJ did not take a position on the crime of aggression, it believed that a mechanism should be established to extend the jurisdiction of the Court, either through an additional protocol to the Statute or through other conventions. While the crimes should be precisely defined, the definitions should be broad enough to apply in situations of both international and internal armed conflict. The thresholds in such crimes should be minimal, and where no thresholds currently existed in law, as was the case for war crimes, no threshold should be added. The Court should have automatic jurisdiction. While the role of national courts was essential in combating impunity, experience showed that national legal systems often protected the perpetrators of such crimes. The addition of lengthy and complex admissibility procedures should therefore be avoided. There must be an independent, full-time prosecutorial organ to bring charges against accused persons and to collect, prepare and present evidence; it should have the power, subject to sufficient checks, to initiate complaints. The Court must be free from political interference. While the Security Council should be able to refer matters to the Court, it should not be able to interfere in the Court's jurisdiction or to protect certain individuals from prosecution. The Court should be a universal body associated with the United Nations and funded from its regular budget. No reservations to the provisions of the Statute should be admissible, nor should the crimes covered by the Court be subject to a statute of limitation. With a view to the speedy establishment of the Court, the Statute should not require a high number of ratifications. In all aspects of the Court's work, whether substantive, procedural or administrative, gender concerns should be taken into account.

77. **Ms. McKAY** (Observer for the Victims Rights Working Group) said that the establishment of an international criminal court was an important symbol for survivors of heinous crimes, but there would be no justice without justice for victims; the International Criminal Court must therefore be empowered to address their rights and needs. There was increasing recognition of the need to take account of victims' rights, both through the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and at the national level, including opportunities for them to obtain various forms of reparation without having to initiate separate legal proceedings.

78. The Court must be able to guarantee protection for victims and other witnesses in the proceedings. That would require a strong and effective victims' and witnesses' unit. There must be appropriate structures for dealing with women victims, and personnel with gender expertise to ensure their proper respect and treatment. Recognition of crimes against women was itself a crucial aspect of justice and the healing process. Child victims also required specialized treatment and mechanisms. Adequate provision must further be made for the effective participation of victims in the proceedings. The Court must be able to ensure the right of victims and their families to reparation, as defined in the draft United Nations basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law. It would be the Court's ability to bring to justice those responsible for the crimes within its jurisdiction that would do most to satisfy the expectations of victims.

The meeting rose at 6.20 p.m.

UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/SR.5
20 November 1998

ORIGINAL: ENGLISH

SUMMARY RECORD OF THE 5th PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 17 June 1998, at 10 a.m.

President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-77

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the plenary meetings of the Conference will be consolidated in a single corrigendum.

V.98-57500 (E)
99-80858

BEST COPY AVAILABLE

The meeting was called to order at 10 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. DINI** (Italy) said that his country had long supported the codification of new rules for international coexistence, ensuring compliance through appropriate instruments. Violence, grievous misdeeds and harassment of individuals and whole peoples were stirring the conscience of societies. Common sense demanded that instruments should be put in place to prevent and punish the most outrageous crimes against international law, to make it clear that, even in war, conduct was subject to rules and penalties. It was not enough for the international community to reach agreement on defining international criminal offences. An authority was also necessary to prosecute them.

2. The International Criminal Court must be a strong institution, with very broad participation, to make its Statute universal. It must be devoid of partisan pressure, independent, impartial and based on the principle of the right to a fair trial.

3. The Court must effectively complement national courts and have jurisdiction where the latter were either unwilling or unable to act effectively. It was crucial to identify the crimes falling within the jurisdiction of the Court, which should be limited to the most heinous crimes committed in the context of armed conflict, whether international or not. Although the Security Council retained responsibility to ascertain the existence of aggression, the Court should be empowered to prosecute the crime itself. In order to safeguard the responsibilities for peacekeeping and international security vested in the Security Council, a balance must be struck in its relationship to the Court. The latter should be able to perform its judicial functions in total independence and without hindrance. The Prosecutor must be empowered to institute proceedings independently, as well as at the request of individual States or the Security Council. The Court's jurisdiction must be triggered automatically and be imposed on States by virtue of accession to the Statute alone. Otherwise, the Court would remain an arbitration tribunal, operating solely according to contingent political will. Every State party must guarantee its total cooperation with the Court in every phase of its work. That was vital to ensure its credibility and effectiveness.

4. **Mr. VAÏO** (Slovakia) supported the establishment of an international criminal court to punish those responsible for the most serious criminal acts. It should be a strong, independent court and must have authority to ensure punishment of those guilty of the crimes of genocide, war crimes and crimes against humanity. The Court's jurisdiction should also extend to the extremely serious crime of aggression. The principle of complementarity was very important, for the International Criminal Court should exercise its jurisdiction only when national legislation did not provide for the initiation of proceedings or national bodies were failing to act. His own country's criminal code provided for prosecution of the crimes of genocide, crimes against humanity and war crimes.

5. The Court's jurisdiction should include crimes committed in both international and internal conflicts. It should have authority to prosecute crimes committed in the territory of a State party, without the consent of that State. If the crime occurred in a State not party to the Statute, criminal prosecution would be possible only with the consent of that State. All States parties to the Statute must undertake to cooperate with the International Criminal Court. The Statute must establish a mechanism for such cooperation, but should not allow reservations.

BEST COPY AVAILABLE

6. **Mr. AL NOAÏMI** (United Arab Emirates) said that, on the eve of the twenty-first century, the world had witnessed increasing violations of human rights. The efforts undertaken by the international community to adopt and promote human rights had faced a number of obstacles, owing to the lack of permanent mechanisms to establish deterrent sanctions. The creation of the International Criminal Court would ensure that persons responsible for serious human rights violations would be prosecuted and punished.

7. The particular crimes to be addressed by the International Criminal Court had to be defined very precisely. The Court must be independent, but the major role of the Security Council should not be ignored, with the result that the Prosecutor should not be able to initiate procedures on his own initiative, but only at the request of a State party or the Security Council.

8. His country was fully prepared to cooperate with the Court, provided that it did not affect its own national security. The International Criminal Court should not consider crimes committed in States not parties to the Statute, unless such States gave their consent, or unless so decided by the Security Council.

9. **Mr. PATRICIO** (Mozambique) said that the International Criminal Court should be a permanent, independent, universal and efficient instrument to punish serious crimes against international law. Since the principles of sovereignty and non-interference were sacrosanct, the prior consent of a State to confer jurisdiction on an international court was required. The International Criminal Court must be complementary to national courts in dealing with the crimes of genocide, war crimes, crimes against humanity and aggression, all of which needed to be clearly defined.

10. Coordination and cooperation between the Court and the Security Council should be clearly set out, so as to enhance international law and respect for universal human rights.

11. He supported the principle that the United Nations should fund the Court initially, until it had sufficient resources of its own. That should not, however, compromise the independence and efficiency of the Court, or that of its judges and the Prosecutor. He urged the Conference to reaffirm its commitment to a world where the kind of war crimes committed in Rwanda and Bosnia and Herzegovina could never be repeated.

12. **Mr. HASHIM** (Brunei Darussalam) believed that individuals should be made responsible for grave violations of international law. National courts were often ineffective in enforcing that responsibility, and there was as yet no permanent mechanism by which individuals could be held accountable, so that there was a strong case for establishing an international criminal court to prosecute individual lawbreakers, and thus break the cycle of violence.

13. The core crimes should be included in the jurisdiction of the Court. Aggression could also be included, provided that it was clearly and precisely defined. The impartiality and independence of the Court could be achieved by ensuring that the judges and other officers of the Court were fully qualified in their particular fields. The Court should have jurisdiction in internal as well as in international conflicts, as most war crimes currently occurred in internal conflicts.

14. The Prosecutor should be allowed to perform his or her tasks without unnecessary hindrance, but subject to the control of the Pre-Trial Chamber. Undue delays could deny justice to victims of atrocities. Since the Court must be impartial and independent, and not subject to any political influence, he supported a close relationship with the United Nations through an appropriate agreement.

15. Complementarity was crucial to the jurisdictional relationship between national justice systems and the Court, which should supplement and not supplant national jurisdiction. States had the primary duty to investigate and prosecute those suspected or accused of committing the crimes which fell within the Court's jurisdiction. Therefore, the Court should not act when States were able and willing to do so.

16. If the International Criminal Court were to be fully effective, it must cooperate closely with States parties. Provisions relating to evidence and procedure would be more properly set out elsewhere than in the Statute.

17. **Mr. NAZAROV** (Tajikistan) said that the world community had been powerless to respond to acts of violence around the world simply because the legal instruments to bring those responsible to justice had not been available. There was an acute need to establish a permanent international mechanism to react promptly to such events and punish those who defied mankind with their crimes. He welcomed the widespread support given to the establishment of an international criminal court. The Court should have jurisdiction over serious international crimes, genocide, aggression, crimes against humanity and war crimes. Terrorism and drug trafficking should also be included.

18. The international criminal court must be independent. The Security Council, with its responsibility for preserving international peace and security, must determine whether a crime of aggression had taken place, and its relevant decision must be binding on the Court for the institution of proceedings against the party declared to be the aggressor. In other cases, decisions of the Security Council and other international institutions must be regarded simply as recommendations or applications for the initiation of judicial proceedings. The Court must be absolutely independent in its proceedings and decisions. It should consider only consider cases in which the national courts of the States concerned, for whatever reason, were incapable of rendering justice.

19. **Mr. FALL** (Guinea), recalling the atrocities perpetrated in many parts of the world, said that the creation of an independent, efficient and effective international criminal court would be a great step forward in implementing human rights. The Court would have to be fully independent, and the Prosecutor should be empowered to open proceedings *proprio motu*, subject only to control by the Pre-Trial Chamber.

20. The complementarity of the Court with national jurisdictions was essential to preserve the sovereignty of States. The Court would exercise its jurisdiction over major crimes such as genocide, crimes against humanity, war crimes and crimes of aggression whenever national jurisdictions did not exist or were unable to prosecute.

21. **Mr. GÖRÖG** (Hungary) said that the International Criminal Court should have inherent jurisdiction over the core crimes of genocide, war crimes (whether committed in international or internal armed conflicts) and crimes against humanity. The crime of aggression should also be included, provided that the crime itself and the relevant role of the Security Council could be satisfactorily defined. There should be no requirement for State consent to the Court's jurisdiction, and the Court should have the authority to determine whether the competent national courts were unable or unwilling to exercise their jurisdiction. The Prosecutor should be empowered to initiate investigations and proceedings *proprio motu*, subject only to review by the appropriate organs of the Court itself.
22. States parties must comply with requests for assistance and cooperation by the Court, and should not allow national laws and cooperation agreements between States to constitute grounds for refusal. The Court should ensure observance of the highest international standards of fair trial and due process at all stages of the proceedings. There should be no reservations to the Statute, because that would defeat the purpose of the Court.

23. **Mr. ZARIF** (Islamic Republic of Iran) said that the establishment of an international criminal court, independent, universal, effective and impartial, would be a milestone towards achieving peace with justice. The

crime of genocide, serious violations of the laws and customs of war, and grave breaches of the four Geneva Conventions of 1949, as well as the crime of aggression, should be covered by the Statute.

24. He drew the attention of the Conference to the special declaration of the Movement of Non-Aligned Countries and to the views of the Asian-African Legal Consultative Committee on ways and means of ensuring universal acceptance of the Court's Statute.

25. He agreed that the Court should be complementary to national criminal justice systems. It would act only where domestic trial procedures were ineffective or unavailable. That should ensure cooperation between States and the Court.

26. The Court should be an independent judicial body, free from political influence and interference. The responsibility of the Security Council to determine the existence of aggression should not undermine the role of the Court in ascertaining the existence of a crime. Aggression and the related role of the Security Council should be defined clearly in the Statute. There should be no suggestion that decisions of the Court were influenced by the Security Council.

27. The Prosecutor should be independent, with clearly defined powers. He or she should have the means to conduct effective and independent investigations and prosecutions. It would be premature, however, to enable him or her to initiate proceedings before the Court. It was also imperative to decide the means of election of judges and other officials of the Court, so as to represent major legal systems and ensure equitable geographical distribution.

28. **Mr. MUTALE** (Zambia) said that recent ethnic conflicts had underlined the need for a permanent international criminal court. Such a court, independent and impartial, would be an effective complement to national criminal justice systems. It must have inherent jurisdiction over the core crimes of genocide, crimes against humanity, war crimes in international and non-international armed conflicts, and aggression.

29. He strongly supported the appointment of an independent and impartial prosecutor, able to initiate investigations into alleged crimes over which the Court had jurisdiction, based on information from any source, without interference.

30. The rights of suspects, accused persons, witnesses and victims should be upheld at all stages of the proceedings. The Court should be funded from the United Nations regular budget, which would facilitate its universal acceptance particularly by smaller, financially weaker States. The Security Council, with its role of maintaining international peace and security, must not be seen to undermine the independence of the Court.

31. **Mr. HAJIYEV** (Azerbaijan) said that, in the past, special courts had been set up to punish those who had perpetrated international crimes. He reaffirmed his belief in the establishment of an effective, viable, independent and strong international criminal court.

32. The principle of complementarity was very important, since the Court should exercise jurisdiction only where national criminal justice systems were not available or ineffective, and only over the most serious crimes such as genocide, aggression, war crimes and crimes against humanity. There should be no statute of limitations for such crimes. States parties should fully recognize the jurisdiction of the Court over those crimes, provided that their occurrence had been confirmed by the Security Council. States should also have the possibility of addressing the International Criminal Court directly. States which were not parties to the Statute should also be subject to its

jurisdiction. The Court must have an independent Prosecutor, with authority to investigate ex officio, but there should be provision for appeal against his or her actions.

33. The death penalty should be excluded, not only for humanitarian reasons but because the objective of the Court was justice rather than retribution.

34. States parties should be responsible for financing the International Criminal Court.

35. **Mr. PERAZA CHAPEAU** (Cuba) supported the creation of an impartial, independent, effective and free court so as to achieve the humanitarian ideal of justice. Despite its independence, the Court could not be separate from the States that created it, and it could not be an instrument for interfering in the internal affairs of States. The principle that States themselves were responsible for prosecuting and punishing perpetrators of crimes against the laws of war or international humanitarian law should be reaffirmed. The Court must clearly have jurisdiction over crimes such as genocide, aggression, war crimes and crimes against humanity, but it should not act when those crimes were being effectively prosecuted by national courts. A clear definition of such crimes would ensure the application of the principle of *nullum crimen sine lege*.

36. The jurisdiction of the Court in respect of a crime should be based on consent by the States parties to the Statute. Its jurisdiction should cover aggression and the threat or use of force, as a constituent part of aggression. The Court should not be subordinate to the Security Council. The main guarantee of its success lay in the good faith of States parties in fulfilling their commitments. It would need stable financial resources.

37. **Ms. SUCHOCKA** (Poland) said that the establishment of the International Criminal Court would strengthen the rule of law, by addressing the individual responsibility of perpetrators of the most serious international crimes. It would constitute a mechanism to combat genocide, war crimes and crimes against humanity. The Court should be complementary to national jurisdictions, but vested with sufficient powers to determine whether States parties had properly discharged their responsibilities or not. It should have automatic competence in respect of core crimes when a State became a party to the Statute. She also fully supported the idea of extending the Court's jurisdiction to the crime of aggression, provided that an acceptable definition could be found. The relationship between the Security Council's competence in determining the existence of an act of aggression and the jurisdiction of the Court should also be clarified. In order to ensure broad access to the Court, States and the United Nations should have the right to bring cases. At the same time, the Prosecutor should have the power to institute proceedings ex officio. The Security Council's role in maintaining international peace and security should not be diminished, but the mere fact that such a matter was on the Council's agenda should not be allowed to obstruct prosecution by the Court. She also supported the creation of a Pre-Trial Chamber to review all indictments and assist the Prosecutor.

38. It was essential that the Statute should include a clearly defined and unconditional obligation on the part of States parties to cooperate closely with the Court.

39. **Mr. GATTI** (San Marino) hoped that the International Criminal Court would be truly independent, efficient and authoritative. Its relationship with national jurisdictions must be based on complementarity and it should intervene only when national legal systems were unable or unwilling to punish those responsible for crimes under the Statute. The Court must be able to determine which cases fell under its jurisdiction. States should not have the option to choose or refuse the jurisdiction of the Court, as that would undermine its effectiveness.

40. He supported the appointment of an independent Prosecutor, able to initiate proceedings subject to appropriate internal control mechanisms. Crimes subject to the Court's jurisdiction must include crimes perpetrated during national as well as international armed conflicts.

41. **Mr. NASR** (Lebanon) said that the International Criminal Court should contribute to the maintenance of international peace and security. Its role would be complementary to that of the Security Council. While the latter was entrusted with enforcement measures against States, the Court could take similar action against individuals. Sanctions would no longer have to be used against peoples and third-country parties, who collectively bore the brunt of sanctions under existing practices.

42. If the Court were to be impartial and effective, it must reflect differing legal systems, particularly in regard to the Office of the Prosecutor. The concept of complementarity of jurisdiction between the Court and national courts must be clear. That would preclude the possibility of political manipulation in defining the willingness of a State to investigate or prosecute a crime. The Prosecutor must be given clear authority to submit a case to trial at the request of a State whose nationals were the victims of a criminal act expressly described in the Statute.

43. The most serious crimes of concern to the international community, namely, genocide, war crimes, crimes against humanity and the crime of aggression, would come under the jurisdiction of the Court, which should extend to all acts listed under the Geneva Convention.

44. **Ms. HODARK** (Croatia) said that international war crimes tribunals such as that for the former Yugoslavia had given a strong impetus for the establishment of a permanent and universal international criminal court. Experience showed that the establishment of a permanent and universal court was possible only if the conditions for just and equal treatment of all individuals and States were fully met. To a certain extent, that meant abandoning the traditional concept of sovereignty of States, although at the same time the principle of subsidiarity must be fully acknowledged.

45. The Court and its Prosecutor must be entirely independent of the political will of individual States. All States, regardless of size, economic or military strength, must cooperate with the Court and implement its decisions in the same manner. There must also be guarantees that cases brought before the Court were of sufficient gravity and significance. The Court must not be burdened with minor violations.

46. **Mr. RAIG** (Estonia) said that a permanent, independent, impartial and effective international criminal court was needed, in the light of persistent gross violations of human rights. Such a court would provide the necessary judicial response in cases where national courts were not able or willing to prosecute suspected persons or investigate crimes.

47. He fully concurred with the representative of the European Union. He also emphasized that the Court should have jurisdiction over the core crimes of genocide, crimes against humanity and war crimes and, when properly defined, the crime of aggression. A State that became a party to the Statute must accept the Court's jurisdiction over all such crimes, including those committed in conflicts of a non-international nature. The Prosecutor must be able to initiate a proceeding ex officio, and to receive complaints from the widest range of sources. The Security Council must also be able to refer situations to the Court. However, to ensure that the Court was impartial and independent, the Security Council should not be able to prevent or delay prosecutions when dealing itself with a situation under Chapter VII of the Charter.

48. There should be no provision for the death penalty.

49. The Court should be financed in a flexible manner from the regular budget of the United Nations and from contributions by States parties.

50. **Mr. LEANCA** (Republic of Moldova) fully supported the creation of an international body to bring to justice those who had committed the most serious crimes of concern to humanity. Sanctions, embargoes or military force, the usual response to violations of international law by States, affected the innocent civilian population, while the guilty escaped punishment.

51. Provided that it was independent, credible and universal, free from any political influence, the International Criminal Court could make a crucial contribution to peace and security in the world. To make the Court effective, States parties to the Statute must accept its jurisdiction over the crimes covered by its Statute. They must also cooperate and provide the necessary assistance.

52. The principle of complementarity must be respected, where national courts were able and willing to prosecute the perpetrators of crimes. The jurisdiction of the Court should cover genocide and war crimes, and, subject to determination by the Security Council, crimes against humanity and aggression. The relationship with the Security Council was very important. However, the Security Council must not be able to halt judicial proceedings other than by a joint decision of all the permanent Members. The Prosecutor should have the right to initiate investigations in the absence of any decision by the Security Council.

53. No reservations should be permitted to the Statute, thus the positions of all States parties would be uniform.

54. **Mr. GOTZEV** (Bulgaria) said that Bulgaria had always supported the establishment of a permanent and effective international criminal court with jurisdiction over the most serious violations of international humanitarian law. He shared the view that the International Criminal Court should complement national legal systems, exercising its jurisdiction only when it was not possible to investigate and punish the crimes concerned. Bulgarian criminal law incorporated international norms on the investigation and punishment of crimes against peace and humanity. He supported the principle that the Court should exercise jurisdiction with respect to the most serious crimes, such as genocide, crimes against humanity, war crimes, and aggression. Given that war crimes were frequently committed in internal conflicts, the Court should include those in its jurisdiction.

55. Bearing in mind the role of the Security Council, under Chapter VII of the Charter, it was important to maintain the independence of the Court in its relations with the Security Council.

56. The role of the Prosecutor was very important. He or she should act independently of decisions by the Security Council, otherwise the latter's veto could prevent the proper functioning of the Court. The Prosecutor should also act at the request of States. The Court's independence would largely depend on a sound financial basis and on the mandates of its officers.

57. **Mr. RICHARDSON** (United States of America) said that the creation of an international criminal court would ensure that the perpetrators of the worst criminal assaults on mankind—genocide, serious war crimes and crimes against humanity—did not escape justice. That would send a clear and unmistakable warning to would-be tyrants and mass murderers that the international community would hold them responsible for their actions.

58. The Court could be truly powerful and effective only if it were built on a firm foundation of international consensus and support and adopted a realistic and workable approach. When national legal systems could not or would not act, ad hoc international criminal tribunals, such as those for the former Yugoslavia and Rwanda, demonstrated that the world could confront evil, secure justice, and ensure international peace and security through

the application of international law. A similar tribunal should be set up to prosecute the perpetrators of atrocities in Cambodia.

59. The Court must be part of the international order, in which the Security Council, with its responsibility for maintaining international peace and security, must play an important role, *inter alia* regarding its trigger mechanism. It must be able to refer critical situations to the Court and instruct countries to cooperate with the Court. The Council's Chapter VII powers would be absolutely essential to the working of the Court.

60. To achieve the support of the international community, the Court must complement national jurisdictions and encourage national action wherever possible. For that reason, it would be unwise to grant the Prosecutor the right to initiate investigations. That would overload the Court, causing confusion and controversy, and weaken rather than strengthen it. The Prosecutor should not be turned into a human rights ombudsman responding to complaints from any source. The proposal that the Prosecutor should have powers to initiate proceedings was premature. However, he or she should have maximum independence and discretion in prosecuting cases referred by States parties or the Security Council.

61. The jurisdiction of the Court must extend to internal armed conflicts, crimes against humanity, including rape and other grave sexual violence. The Court must have a clear, precise and well-established understanding of what conduct constituted a crime. At the same time, acts not clearly criminalized under international law should be excluded from the definition. It was, therefore, premature to attempt to define a crime of aggression in terms of individual criminal responsibility. Vague formulas that left the Court to decide on the fundamental parameters of crimes should be avoided.

62. The goals of the Conference would be best served by the creation of a court that was physically and administratively independent from the United Nations. However, it should not exist to sit in judgement on national systems and intervene if it disagreed with them. It should focus on recognized atrocities of significant magnitude and thus enjoy near universal support.

63. **Mr. HEDBERG** (Observer for the Council of Europe) said that a permanent international criminal court could have legitimate status only if it were established by the United Nations. The Conference offered a historic opportunity to end impunity for international crimes and deter future atrocities.

64. The Council of Europe strongly supported the creation of the Court as a means of consolidating the rule of law at international level. Its Parliamentary Assembly had frequently called for the creation of such a court.

65. The Court must have the solid support of the international community and be endowed with the powers, procedures and means to be effective, thereby commanding immediate and permanent respect throughout the world. Its judges must be independent and of the highest professional standing. The Court was not, however, a substitute for effective, independent national judicial systems which should be fully involved.

66. In the current year, no capital punishment had been carried out in member States of the Council of Europe, the vast majority of which had ratified Protocol 6 to the European Convention on Human Rights. The Council of Europe's mechanisms for the protection of human rights offered examples of strong and effective institutions which relied on their preventive and deterrent effect and the respect that had developed over time.

67. **Mr. DUBOULOZ** (Observer for the International Humanitarian Fact Finding Commission) said that the Rome Conference was a logical sequel to the 1949 Geneva Conventions which had defined precise rules to protect

human life and dignity in armed conflict. Those Conventions had certainly been most useful, even in the absence of a basic instrument to make them fully effective. The establishment of an international criminal court was certainly the missing element.

68. He had great hopes of the Court. His own Organization could be a first choice as an instrument for establishing the facts, particularly where rapid reaction was necessary in order to conserve evidence. It had also taken powers under its rules of procedure to investigate situations of internal armed conflicts.

69. **Mr. KENDALL** (Observer for the International Criminal Police Organization) said that the establishment of an international criminal court was particularly welcome to his Organization, with its responsibility for fighting international crime. Interpol, with its 177 member States, was the only intergovernmental organization able to exchange police information in a rapid, reliable and permanent manner. It was thus in a position to help the International Criminal Court. Its constitution allowed it to assist in tracking down individuals, as its assistance to the international criminal tribunals at The Hague and Arusha had demonstrated. That should constitute a precedent in international law which should be developed when establishing a permanent court. Complementarity in relation to national jurisdiction meant that the Court would play an important role where national criminal justice was unavailable or ineffective. The member States of Interpol, which had established conditions for mutual assistance in law enforcement, must respect that complementarity, ensuring the same conditions for assistance to the Court as to national courts.

70. He regretted that the wording of article 86 of the draft Statute implied that recourse to Interpol was a subsidiary means for transmitting requests for cooperation to States. That was a backward step compared with other conventions on mutual legal assistance in criminal matters, which recognized, particularly in urgent cases, that Interpol was the most readily available means of transmission. He had certain improvements relating to international cooperation and mutual legal assistance to propose for inclusion in the draft Statute and requested permission to participate in the working group on Part 9 of the draft Statute.

71. **Ms. OBANDO** (Observer for the Women's Caucus for Gender Justice in the International Criminal Court) urged all delegations to establish a court that would put an end to impunity and guarantee justice and reparation to the victims of the most serious violations of human rights and humanitarian law. It should be structured to reflect the disproportionate impact of such crimes on women.

72. The Court should be governed by the principles of independence, effectiveness, universality, comprehensiveness and credibility. It should have inherent jurisdiction over war crimes, crimes against humanity, genocide and aggression, without requiring State consent. War crimes should cover both internal and international armed conflicts, and include all acts of sexual and gender violence.

73. Gender balance should be observed in the structure and procedures of the Court. There should be a legal adviser on gender issues in the Office of the Prosecutor to monitor gender compliance, particularly in the investigation of crimes.

74. Victims and non-governmental organizations should be allowed to present complaints prior to an investigation. Effective protection should be granted to victims and persons at risk, *inter alia* by the establishment of a Victims and Witnesses Unit in the Court to guarantee their safety.

75. **Mr. BUSDACHIN** (Observer for the Transnational Radical Party) said that his Organization had long campaigned for the establishment of an international criminal court, which would be a powerful tool to complement

political action and diplomacy. He hoped that justice would never again be separated from peace or sacrificed on the altar of *Realpolitik*. What was required was not an "alibi" tribunal, but an effective, fair and independent court that would bring war criminals to justice, a court in which the Prosecutor would be able to initiate investigations. Although funded from the regular budget of the United Nations, it would remain an independent institution within the United Nations system. It would establish the principle of a new dimension of national sovereignty and overcome the principle of non-interference.

76. **Mr. GOLDSTONE** (Observer for the Coalition for International Justice), speaking as the first Chief Prosecutor for the ad hoc tribunals, emphasized the cardinal importance of a politically independent court with an independent prosecutor. If the Court had jurisdiction over widespread and systematic violations of the most serious war crimes and crimes against humanity, and if the Prosecutor were accountable to the judges of the Court, there would be no grounds for fearing that the Prosecutor might "run wild". States parties would have substantial protection if the Prosecutor were accountable and removable by judicial process. In addition, the Office of the Prosecutor would necessarily be staffed by professional lawyers and investigators from many countries, who would inevitably draw attention to any inappropriate action or political bias on the part of the Prosecutor. The rules on complementarity and judicial procedures to allow challenges to a prosecutor's assertion of jurisdiction would provide further protection.

77. An international criminal court that was not free of political control would certainly not enjoy the confidence and cooperation essential for its success. Most importantly, it was the victims who would suffer the most if the Court were not independent and effective.

The meeting rose at 1 p.m.